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Floor Debate
January 23, 2008

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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this the tenth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Reverend Todd Burpo from the Crossroads Wesleyan Church, Imperial, Nebraska, and he's also the chaplain for the Nebraska State Volunteer Firefighters Association; Senator Christensen's district. Please rise.

PASTOR BURPO: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the tenth day of the One Hundredth Legislature, Second Session. Senators, please record your presence. Record, Mr. Clerk.

CLERK: I have a quorum present, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, I have a Reference report referring two bills, LB1047 and LB1055. Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB715 to General File. I have hearing notices from the Revenue Committee, and from the Government, Military and Veterans Affairs Committee, those signed by their respective Chairs. That's all that I have, Mr. President. (Legislative Journal pages 323-324.) [LB715]

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SENATOR LANGEMEIER: Thank you, Mr. Clerk. New bills.

CLERK: Mr. President, new bills. (Read LB1091-1100 by title for the first time.) And that's all that I have at this time, Mr. President. (Legislative Journal pages 324-326.) [LB1091 LB1092 LB1093 LB1094 LB1095 LB1096 LB1097 LB1098 LB1099 LB1100]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, LB465. [LB465]

CLERK: LB465 is a bill by Senator Chambers. (Read title.) The bill was introduced on January 17 of last year, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments pending, Mr. President. (AM485, Legislative Journal page 691, First Session, 2007.) [LB465]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, you are recognized to open on LB465. [LB465]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, as I look around the Chamber I can see that this bill has generated a lot of excitement, and people are waiting with bated breath to hear a discussion of this bill, and I will try not to disappoint anybody. In reality, it is a very straightforward, simple bill in terms of what it does. But to give a bit of background: The Legislature a few years ago adopted a bill related to testimony offered by jailhouse informants, or in the parlance of the street, a stool pigeon or a snitch. In some instances, these people know nothing about the case they're testifying in, but they will fabricate a story, hoping that by telling the prosecution they will testify against the defendant, the snitch will be able to get a deal. So what this bill--the original form, and you'll see it in the green copy---did was to lay out some specific safeguards, such as the criminal history of the snitch; the time, place, and circumstances under which whatever the snitch is going to testify to was heard, because in many instances they are not even in a position to hear what they're going to talk about. If you read the bill, the green copy, rather than me go through every part of it, it lays it out. There is no complexity about it whatsoever. But the key to the whole thing is that before any testimony from a jailhouse informant can be admitted into evidence, these disclosures relative to this person's background must be made ten days, I believe it is, prior to an appearance. You would also have to elicit from this person the number of times he or she had testified against others, the times that statements were offered by this person but the person was not called to testify, and all of this goes to what is known as credibility. When a person is given a deal, a bargain, or anything in exchange for testimony, it is determined that there can be a question of a legitimate nature as to whether such testimony is reliable. So the purpose of this bill, the original law, and the amendments, is to offer some additional safeguards. You will notice from the committee statement that several people testified against the bill. The other day, on a bill I had, the

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question was raised as to what these people testified to. Neither I nor anybody on the committee could remember. They just generally said they were opposed to it. These individuals did have specific concerns, and although I cannot quote verbatim what they said, I can tell you in general what the problem was that they saw with the bill. It was too broadly drafted. It spread the net too far. The Judiciary Committee took that testimony under advisement. Amendments were drafted by the committee specifically to address those concerns. So in order not to take more time than is necessary to adequately deal with the bill, I have offered background on what the bill is, the nature of the testimony against it, the disclosure to you that the committee took this testimony and drafted amendments appropriate to deal with those concerns. When the committee amendment is given I will comment on them, offer additional explanation, then answer any questions that you may have. But by way of opening, Mr. President, that is all that I will offer at this point. Thank you. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Chambers. As the Clerk has stated, there are committee amendments offered by the Judiciary Committee. Senator Ashford, as Chair of the Judiciary Committee, you're recognized to open. [LB465]

SENATOR ASHFORD: Thank you, Mr. President and members. The committee amendments do just as Senator Chambers described, responding to some of the issues raised by opponents to the bill regarding the breadth of it. And essentially, the committee amendments do two things. First of all, Senator Chambers is correct. If you look at the green copy of the bill, it does fairly specifically set forth the criteria that would apply in these cases. But the committee amendments do refine it in two ways. First of all, it clarifies that the expansion that's talked about in the bill of the definition of a jailhouse informant only applies to persons detained for questioning who were offered or received any deal, promise, inducement, or benefit in exchange for their participation in the investigation. So it tightens up that definition. Also, the second part of the committee amendments limits the requirement in Section 2(4) of the bill, the green copy, that a prosecutor turn over information on all investigations in which a jailhouse informant was involved in any manner, to only those situations where an actual deal or other inducement was offered by striking the language, "in any manner," and adding, "during the course of which the jailhouse informer was offered or received any deal, promise, inducement, or benefit." Again, as Senator Chambers suggests, these amendments were offered and adopted to respond to some of the concerns raised during the hearing on this bill. And that would be my opening, Mr. President. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Ashford. The floor is now open for discussion. Those wishing to speak, Senator Chambers, you're recognized. [LB465]

SENATOR CHAMBERS: Thank you. Mr. President, I offered to give additional explanation after the amendments were presented by the Chair of the Judiciary Committee. If you look on page 2, and you incorporate the language of the committee

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amendment, it would be inserted on line 16. Without that language, that new language, it would say that a person would be a jailhouse informant if detained for questioning, period. That is too broad, especially based on what the purpose of the bill is. It is to deal with those people who were offered an inducement, a deal, or any other thing that can have an influence on their testimony. So instead of stopping by saying a person detained for questioning, you would add this language, "questioning regarding the event for which such person received a deal, promise, inducement, or benefit." Then it's just not wide open to anybody detained for questioning on any matter. We're looking always at those individuals who were given the deal or the inducement. So by using that language in the Judiciary Committee amendment, we narrow it. There is an additional sentence that will be new language: A jailhouse informant is deemed to be in custody whether physically in jail or not. There have been some very clever, would-be clever officers in Omaha who would have a person in jail. They would want to get statements from that person but circumvent the law and not have to make the disclosure that they offered this person a deal by taking them temporarily out of jail. They will take them out of the cell, put them in the cruiser, or drive them around. They'll get the offer of the deal under those circumstances. Then the police could argue the person was not in custody. So what is being said is that a person is in custody, whether physically in the jail or not. Then you look at the above language that describes the status of a person who is deemed to be an informant. You can be under charges; you can have been tried and convicted but not yet sentenced; all of those situations. So when we put in the bill the language, the person is in custody whether physically in the cell or not, simply makes it impossible to do an end-run around the law. Then I will go over to the second page. Senator Ashford explained all of this very well. But having promised to offer additional explanation, I'm being redundant. Probably not as effective as Senator Ashford, because sometimes I tend to be more loquacious than is necessary to achieve the desired result, which is to give people the information they need; not necessarily what I think they need. But the new language here, again, is to narrow this language that would have been in the original bill. In the original bill it talked about any investigation in which the informant was involved in any manner. Well, again, since we're talking about a specific event and testimony is to be given, we will restrict the application to that particular event about which the person is going to testify and for which testimony the person has been offered a deal, an inducement, and so forth. [LB465]

SENATOR LANGEMEIER: One minute. [LB465]

SENATOR CHAMBERS: I don't know of anything else that needs to be offered by way of explanation, but I will deliver on the third part of my offer, and that is to answer any questions that anybody would like to put to me. Thank you, Mr. President. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Stuthman, you are recognized. [LB465]

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SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to engage in a little conversation with Senator Chambers. [LB465]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LB465]

SENATOR CHAMBERS: Yes, I will; several, if necessary. [LB465]

SENATOR STUTHMAN: Okay. Thank you, Senator Chambers. In this amendment, I don't understand the process of a deal, when they're making a deal when you're in custody. Explain to me what would be something that would constitute a deal. [LB465]

SENATOR CHAMBERS: Okay. You've got three narcotics charges against you. If you testify against Senator Wightman--we call him "Fast Draw Wightman"--we'll drop two of those charges against you; and if you're convicted on the third one, we'll recommend probation. That's the deal in exchange for your testimony. [LB465]

SENATOR STUTHMAN: Thank you, Senator Chambers. Another question that I have is a jailhouse informer. That means it's a person that's in custody in the jail? Would that be a jailhouse informer? [LB465]

SENATOR CHAMBERS: I will read the definition because it's in the law, then I won't leave anything out, and it begins in line 12 on page 2, "For purposes of" the affected sections, "a jailhouse informer is a person in custody as: An accused defendant, a convicted defendant awaiting sentencing, a convicted defendant serving a sentence, or a criminal suspect." Then we would add the new language, "or a person detained for questioning" regarding the event about which or she will testify. That person may not have been charged, may not be convicted or these other things, but is in police custody for the purpose of being questioned and is going to be offered a deal in exchange for the testimony. And we added the language that the person need not be physically in jail in order to be in custody. And I think every lawyer can tell you that a person can be in custody without being in jail or ever having been in jail. But this makes it crystal clear. [LB465]

SENATOR STUTHMAN: Yes, Senator Chambers, I think it does, but I have a little concern with an individual being in custody and by your previous statement you stated that they necessarily don't have to be in the jailhouse cell. They can be in custody...would you say that would be in custody in a police cruiser or be in custody in the police station? [LB465]

SENATOR CHAMBERS: Whenever you are...whenever a police officer has control over you and you're not free to leave, you are in custody. That can be on the highway; that can be in the cruiser; it can be any location. [LB465]

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SENATOR STUTHMAN: So in other words, it's an individual that's under the directive of the police officer; that would constitute being in custody. [LB465]

SENATOR CHAMBERS: Generally speaking, yes. [LB465]

SENATOR STUTHMAN: Okay. Thank you, Senator Chambers, and that's all the questions that I have. Thank you. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Pedersen, you're recognized. [LB465]

SENATOR PEDERSEN: Thank you, Mr. President and members of the Legislature. I stand in support of this bill. Because of my experience and where I have worked for most of my life, I am going to tell you just a little bit about what people will do to try and get a little bit ahead when they're incarcerated. And it's said in kind of a joke but it's true. Would you believe once in awhile some of these people lie? Of course. Especially if they think it's going to do them any good. We've got a lot of very good prosecutors in this state. We've got a lot of good judicial. But we also give our prosecutors a job, and that's to get a conviction. And there are some that go to any length to get a conviction. That is not what we want in our system of law. A lot of inmates are very honest and very straightforward, but there are some that are not, and I don't think we can take that chance, especially when we're going to incarcerate or even put on death row people with what another person had to say when they were incarcerated themselves and needed a little push for themselves. There is too much chance for funny stuff here, people, and that's why I will support this bill, and do not believe that we should use jailhouse informers in getting a conviction. Thank you. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Pedersen. Those wishing to speak, we have Senators Carlson, Gay, Pirsch, and Wightman. Senator Carlson, you're recognized. [LB465]

SENATOR CARLSON: Mr. President and members of the Legislature, before I address this bill I'm going to address a comment to Senator Chambers. I appreciated the compliment he gave me yesterday on my leather jacket, and I didn't have an opportunity to respond yesterday, but as he can see I don't have it on today, but neither yesterday nor today did I wear my helmet. I would like to address a question to Senator Pirsch, if he would yield. [LB465]

SENATOR LANGEMEIER: Senator Pirsch, would you yield to a question? [LB465]

SENATOR PIRSCH: Yes, I will. [LB465]

SENATOR CARLSON: Senator Pirsch, as you and I both know, and we learned quickly

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that our votes are public in the Legislature. And in the hearing on this bill, the police chiefs, the Nebraska County Attorneys Association, and the police officers of Nebraska were there in opposition, and we've listened to the response to that opposition this morning. You voted against it. Are you comfortable now with these amendments that have addressed what I believe was opposition to the bill? [LB465]

SENATOR PIRSCH: Well, I appreciate the question for my...Senator. I tell you, my vote was probably based upon more my comfort level. I think I still had ongoing questions, particularly with respect to incidences as described by Senator Stuthman that may go on in police cars years before that. And so it may help to engage in Senator Chambers, and I plan to in a series of questions, to kind of make more definite the extent of my concerns. And so I do plan on following up on that. [LB465]

SENATOR CARLSON: Okay. Thank you, Senator Pirsch, and thank you, Senator Chambers. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Gay, you are recognized. [LB465]

SENATOR GAY: Thank you, Mr. President. I would like to ask if Senator Chambers would yield to a few questions. [LB465]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB465]

SENATOR CHAMBERS: Yes, I will. [LB465]

SENATOR GAY: Thank you, Senator. Senator Chambers, Senator Stuthman alluded to if...you said in custody means if you get pulled over going home from work here, I get pulled over, anybody gets pulled...is that in custody? Or does in custody mean after, hey, you've done something wrong; we've read you your rights? I mean... [LB465]

SENATOR CHAMBERS: What courts have said, that whenever a person is stopped by an officer and not free to leave, that person is under arrest. When you are under arrest you are in custody. What I want people to focus on is that we're talking here about testimony that is to be given against another person, and the bill comes into play only if that testimony is given in exchange for a deal offered by the prosecutor. If anybody in the world is a good citizen or a bad person, and says I don't like what I saw and I'll testify, and no inducement or deal is given in exchange for the testimony, the bill doesn't apply. But if, in exchange for that testimony, something is offered that benefits the snitch, that disclosure has to be made. That's what we're talking about: the disclosure of information that could go to the credibility of the testimony that's to be offered. When a person is given something of value in exchange for testimony, that raises a question as to its reliability. [LB465]

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SENATOR GAY: Okay. And I'm going to show my ignorance in criminal justice... [LB465]

SENATOR CHAMBERS: Well, that's all right. You're not on the committee so don't... [LB465]

SENATOR GAY: I'm no lawyer. [LB465]

SENATOR CHAMBERS: Any question you want to ask, feel free. [LB465]

SENATOR GAY: Okay. Well, the question is, now under...so if that's going on now, and somebody is going to testify against me currently, is that currently the law that you have to tell the jury or whoever that, oh, by the way, he's getting a deal, he or she is getting a deal? That's the current law? [LB465]

SENATOR CHAMBERS: That testimony would not even be allowed to be given if the disclosure is not made. [LB465]

SENATOR GAY: So we have to give the disclosure now under the current law. [LB465]

SENATOR CHAMBERS: Before. Before. [LB465]

SENATOR GAY: Who's that given to? [LB465]

SENATOR CHAMBERS: It says at least ten days. In the existing law it says, on page 2, beginning in line 22, "At least ten days before trial, the state shall disclose to the person against whom the jailhouse informer will testify, or to such person's counsel." Then it mentions the various things that will have to be disclosed. And if the disclosures are not made, then that testimony is not admissible. That is the result of not making these disclosures. [LB465]

SENATOR GAY: Right. So they tell the defense attorney this, that, by the way, he's getting this deal. [LB465]

SENATOR CHAMBERS: Yes. And if the person doesn't have a lawyer, they tell it to the person against whom the testimony will be given. [LB465]

SENATOR GAY: Okay. And then Senator Carlson commented to Senator Pirsch about this, but maybe in your mind can you...? What was the argument against this from the chiefs or the county attorneys or the police officers when they were testifying? [LB465]

SENATOR CHAMBERS: In its original form, the bill was too broad, because on the first

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page it said a person detained for questioning, period. And that could be the situation where you mentioned you're stopped along the road. So the language was added. The questioning must be regarding the event for which that person was offered a deal. If no deal was offered, the person can testify. If a deal was offered and the disclosure is not made, then that testimony is not admissible. There was a case, at least one, maybe two that I read about, in Douglas County, where this kind of disclosure was not made... [LB465]

SENATOR LANGEMEIER: One minute. [LB465]

SENATOR CHAMBERS: ...and it was determined afterward that it should have been made, and the conviction was thrown out. Or, if it didn't go all the way to a conviction, there was a mistrial or something. But if it's determined afterward that a disclosure should have been made and was not, then action is taken to, that the court thinks is appropriate, to rectify that problem. [LB465]

SENATOR GAY: Okay. Thank you, Senator Chambers. Thank you, Mr. President. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Pirsch, you are recognized. [LB465]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Chambers might yield for a number of clarifying questions. [LB465]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB465]

SENATOR CHAMBERS: Happily; with a song in my heart. [LB465]

SENATOR PIRSCH: Well, thanks. With respect to situations as Senator Stuthman referred to, conversations between the so-called informant and the police that may occur within the context of a...in a questioning within a police cruiser, which would be in custody, clearly, the question would be...well, first of all, let me ask you that. Would that be in custody? I mean, is there a custody requirement here? [LB465]

SENATOR CHAMBERS: Yes. [LB465]

SENATOR PIRSCH: Okay. And would that be in custody per your...? [LB465]

SENATOR CHAMBERS: Now, ask me the example again. [LB465]

SENATOR PIRSCH: An officer indicates that he wants to speak with an individual about a crime that's...or about a particular crime, and within the context of sitting in a cruiser,

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the individual...you know, there's...he hasn't been formally informed that he's under arrest, but the individual is sitting in the back of a cruiser, talking to the officer about facts involving a crime. [LB465]

SENATOR CHAMBERS: Here's what we did, Senator. Because of the fact that there can be a gray area, we used the word "detained"; detained for questioning about this event. So in order not to go into a convoluted argument as to whether there was an actual arrest, if the person were detained by the officer. Let's say the person is stopped on the street and the officer begins to talk to this person, and the person may be free to leave but doesn't know it. The fact that an officer has made the stop and not told the person, you're free to leave, could give the person the impression that he or she is not free to leave; so the "in custody" or "detained for the questioning." The "in custody" situations are laid out explicitly in the bill. But since we're getting now to a form of questioning where an attempt might be made to circumvent the law, that detention which is for the purpose of questioning the individual about the event that he or she will testify to, would be involved. But if no inducement is offered for that testimony such as, I'll let you go for now if you say this or that and will say it in court, if there is no inducement, the bill doesn't apply. [LB465]

SENATOR PIRSCH: Okay. With respect to the word, the use of the term "detention" or "detained," which is...also you've included in the bill, you intend that to be a broader type of contact than the term "in custody," because custody has a specific narrow legal meaning where the individual is not free to go, correct? [LB465]

SENATOR CHAMBERS: Yes. And since we're going after the issue not of whether or not an arrest was appropriate, but rather whether testimony that is going to be presented during trial was obtained under circumstances that the bill would apply, we used "detained" as well as "in custody." [LB465]

SENATOR PIRSCH: Would "detained" have the same meaning or a similar meaning to "have contact with?" [LB465]

SENATOR CHAMBERS: I would have to know the nature of the contact before I say that. I can't really answer. [LB465]

SENATOR PIRSCH: Could "detained" occur in a setting not within a police cruiser but, rather, just out on a street corner... [LB465]

SENATOR CHAMBERS: Sure. [LB465]

SENATOR PIRSCH: ...an officer approaches and asks questions? [LB465]

SENATOR CHAMBERS: Sure. And the person is given the impression, without being

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told, that he or she is not free to leave. Now, if the person says nothing, we're not under the bill. I think what you might be getting at, and I don't want to put words in your mouth, is where something in the nature... [LB465]

SENATOR LANGEMEIER: One minute. [LB465]

SENATOR CHAMBERS: ...that can be testimony will be obtained. Because if they just talk, then this bill doesn't apply. [LB465]

SENATOR PIRSCH: But I guess what I'm saying is, does it open the springboard with that generality to say, to argue in every case, that there was a free...? Does it give a defense attorney the room to argue that every relating of information was, in their belief, during detention and, therefore, it should have been disclosed? I guess what I'm saying is,... [LB465]

SENATOR CHAMBERS: If a deal... [LB465]

SENATOR PIRSCH: ...is this...is "detained" too broad of a word or...? [LB465]

SENATOR CHAMBERS: No. Here's what we're after: If a deal is made. What we're looking at is the fact that the testimony may be compromised if a deal is made in exchange for it. [LB465]

SENATOR PIRSCH: Okay. [LB465]

SENATOR LANGEMEIER: Time. Thank you, Senator Pirsch. Senator Wightman, you're recognized. [LB465]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I have two or three questions I'd like to pose to Senator Chambers. [LB465]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB465]

SENATOR CHAMBERS: Yes, I will. [LB465]

SENATOR WIGHTMAN: First of all, just for clarification, when we're talking about a disclosure--and I know...I gathered from Senator Gay's question that he might have a question as to whether this needs to be disclosed to a jury--the disclosure is only to the opposing attorney, the defense attorney in this case. Is that correct? [LB465]

SENATOR CHAMBERS: Exactly. And then it's up to the defense attorney to do with it what he or she thinks is appropriate within the confines of what's allowed in a courtroom. [LB465]

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SENATOR WIGHTMAN: Right, depending upon what the disclosure shows, he would then make the determination of whether he wants to present this to a jury or how he would want to handle it. Is that...? [LB465]

SENATOR CHAMBERS: Right. But it can be disclosed to a jury, but that's not required...I meant...oh, yeah, I'll just leave it like you said. I think people understand our exchange. [LB465]

SENATOR WIGHTMAN: Okay. My next question would be...and I believe from your answer to Senator Pirsch's question, if somebody...occasionally out there, they'll receive...the person will receive a letter from the sheriff's office, and they want them to stop by for questioning. I assume that would be like questioning them, and the person would probably think that he has to respond to that, and you would consider that to be in custody? [LB465]

SENATOR CHAMBERS: That would be kind of in that gray area where may be detained once the person came to the sheriff's office. The letter itself would not constitute a detention, but once the person showed up and was under the impression that he or she had to be there, that person would not have been told by the sheriff, you're a suspect, you're under arrest, but told, I want to talk to you, and you come. Then that could be a detention for the purpose of questioning if a deal is made. If no deal is made, if no inducement is offered, if that person is not going to testify, the bill does not apply. [LB465]

SENATOR WIGHTMAN: So I understand that the letter itself would not constitute the "in custody." But once the person shows up, it probably is going to be subjective in his mind... [LB465]

SENATOR CHAMBERS: Yes. [LB465]

SENATOR WIGHTMAN: ...as to whether he's under...in custody. [LB465]

SENATOR CHAMBERS: Or detained. [LB465]

SENATOR WIGHTMAN: And then I have a question, Senator Chambers, with regard to, frequently, as part of the investigation, a person will make a statement that implicates someone else. Now, that may or may not be, the other person's act, may not have been a criminal act. [LB465]

SENATOR CHAMBERS: Uh-huh. [LB465]

SENATOR WIGHTMAN: Then later, perhaps an inducement deal is offered, and he

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gives additional information to the sheriff's office, or whoever, with regard to the other person's action and involvement in that crime. Now, once that happens, is the information that they received earlier, prior to the time that they offered an inducement, is it subject to this change in the law? [LB465]

SENATOR CHAMBERS: If the person is talking to the officer and implicates somebody else, and the officer says, I want you to testify to that, and no offer is made, and the person testifies, the bill doesn't apply. And the only time a person is going to be given an offer is if that person faces some kind of jeopardy. That person may be a suspect, may be told, if you'll testify, we won't charge you with what we can, either in this case or in another one that we know about you. Once the offer is made in exchange for the testimony in court, then the bill applies, because the testimony would not have been given but for the offer of that inducement. [LB465]

SENATOR LANGEMEIER: One minute. [LB465]

SENATOR CHAMBERS: So whenever the police officer got the information, the testimony must come from the person who gave it. And if that person says, the only way I will testify is if you do such and such for me, then the bill applies, even though the officer may have gotten the information previously. When the testimony is to be given, that's when the bill may come into play. [LB465]

SENATOR WIGHTMAN: That answers my question. Thank you, Senator Chambers. Thank you, Mr. President. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Pirsch, you are recognized. [LB465]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I appreciate the dialogue going on. I wonder if Senator Chambers might yield to a series of questions here again. [LB465]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB465]

SENATOR CHAMBERS: Since we're continuing, (singing) with a song in my heart. Yes, I will. [LB465]

SENATOR PIRSCH: Thank you. And I appreciate working with me in exploring these areas, because I guess the significance to me is if there are gray areas as far as the breadth or clarity of the terminology we're using, the ramifications are such that I think what will happen is if the prosecutor, in interpreting the statute, has one belief, and that leads them to not disclose, and then the trial is held and perhaps the nature of this contact becomes known to the defense attorney or the defendant, and in their

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interpretation they view the measure differently, then that gives an appealable issue, correct? And so we would rather have a clarity and a conciseness to the definitions that we're using so that we're all on the same page. And that's the approach that I'm looking at. And we kind of explored the clarity and the breadth of the term "detention" in the last series of questions. I guess I would like to explore the, a little bit this time, the clarity and breadth of the terminology "offer." You said that this is a bill which affects testimony in exchange for a deal, correct? [LB465]

SENATOR CHAMBERS: Yes. [LB465]

SENATOR PIRSCH: Okay. With respect to a deal, let me give a hypothetical. This takes place on the corner. An officer walks up to an individual, and there's the issue of detention aside, but says something to the effect of, you know, talks with him a little bit about I'm relating an incident that occurred last January 3, thought you may know something about it; if you do know something, you know, it will be better for you, it will go better for you if you are to tell me now what your possible involvement is. Is that a deal in...I mean, is that then...should the defendant reveal something, is that an offer, quote, unquote, an offer such that it would kind of spur this statute and must, therefore, be revealed? [LB465]

SENATOR CHAMBERS: Senator Pirsch, I've tried to refer to the language in the bill and the amendment itself so that we'll know what we're dealing with, and I think you're right in wanting the specificity. I've used the term "deal," but here's the language: a deal, a promise, an inducement, or a benefit. So if the promise that it will go easier or the suggestion that it will be easier, go easier, that is an inducement to give testimony which otherwise would not have been given. And, Senator Pirsch, I appreciate what we're doing, but prosecutors are not as dense as what your questioning would suggest. They know very well what this means. They know very well that if they err, they should err on the side of disclosure, rather than presenting a defense attorney with an appealable issue, which very well may result in a reversal. So if the snitch is credible in every other way, then say, yeah, we talked to him; we said this and that. And then if the snitch is put on the stand, the believability will be transmitted to the jury by his testimony even if the defense attorney says, well, they talked to him earlier. But the defense attorney is not stupid either. If this is a very credible witness, the defense attorney is not going to come up with an inconsequential point... [LB465]

SENATOR LANGEMEIER: One minute. [LB465]

SENATOR CHAMBERS: ...like that because it will seem like he's got nothing. [LB465]

SENATOR PIRSCH: Uh-huh. And I appreciate that. And obviously the prosecutors, it's important that they have a clarity about it. But also it affects really the first call. The prosecutors won't even be aware of it unless the actual police officer has a recognition

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in his mind, a general...in his, what may be just general statements that he'd make to everyone in the public, are actually a, quote, unquote, offer and, therefore, should be documented and actually passed along to the prosecutor. I mean, I guess what I'm saying is, is there a clear line here that law enforcement officers who would have to then remember that they've made such an offer, just... [LB465]

SENATOR CHAMBERS: Well, Senator Pirsch, it's up to the prosecutor to do his or her job, and tell these officers, if you offered this guy anything, tell me; anything, tell me. And then get the cop to tell. Then if you have somebody you're going to present as a witness, you don't just put the person on the stand. Not only do you interrogate that person, you prepare that person as to how he or she should testify. And I want the rest of the people in this body to know... [LB465]

SENATOR LANGEMEIER: Time. [LB465]

SENATOR CHAMBERS: Oh, you said time? [LB465]

SENATOR LANGEMEIER: Time. [LB465]

SENATOR CHAMBERS: I will give you some of my time, Senator Pirsch. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Wishing to speak we have Senator Carlson, Lautenbaugh, and Chambers. Senator Carlson, you're recognized. [LB465]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question to Senator Chambers, if he would yield. [LB465]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB465]

SENATOR CHAMBERS: Yes, I will. [LB465]

SENATOR CARLSON: Senator Chambers, many times you've made suggestions about changes in wording and hoping to make a bill better even if you may not support the bill. On this amendment we've got these four words: deal, promise, inducement, or benefit. Now, if we took "promise, inducement, or benefit" as a group, what does "deal" add to that set of words? Does "deal" add anything? Does it need to be there? I don't like the concept of a deal because that indicates something shady to me, and I don't care for that. If that weren't in there, how does it change the amendment? [LB465]

SENATOR CHAMBERS: Senator Carlson, how you feel about the language is irrelevant. We're dealing with the reality that attends prosecuting crimes. Courts will use the term, a "deal" was made. The prosecutor will use the term, a "deal" was made.

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"Deal" is a term used in the trade, in the same way that plea bargain. Some people say we want to do away with plea bargains. Courts and everybody in the system, prosecutor and defense will say, without the tool of plea bargaining, you cannot effectuate the criminal law and its sanctions. So there might be things that laypersons don't like and would like to see it expressed in layperson's language. But when you're dealing with a particular trade, science, or profession, there are words which in that profession are called terms of art. They have a specific well-known meaning and they're understood by everybody, so "deal" should stay there. [LB465]

SENATOR CARLSON: Okay. I accept that explanation. Another hesitation I have in talking about things like this, I don't like the whole concept of deals and promises and inducements or benefits. And I think specifically of a case that was rather recent, and a lady was killed by a drunk driver who had five DWIs, and I imagine there were some deals or inducements along the way that even allowed that person to still be on the road. So I just have an aversion to the whole idea of these things, and yet I understand in reality that's part of the process. Thank you. [LB465]

SENATOR CHAMBERS: But, Senator Carlson, if I may, a situation arose in Omaha where a judge allowed a DWI to be dropped and an arrangement to be made where a sentence that was not very serious was put on this person who had had numerous DWIs. In that case, the prosecutor objected, and the law allows it, because the sentence was too lenient. It was taken to the Supreme Court. The Supreme Court agreed, threw out that earlier sentencing, turned it over to a different judge to make a different, harsher sentence. So some of this is on the prosecutor. They don't have to do what they do. They don't have to ever enter a plea bargain. They don't have to ever make a deal. But in many cases they don't have the evidence. The officers may have botched an investigation and the only way they can get this person, whom everybody knows is guilty, is to say, we could hang you if we had everything we need; we haven't got it all; we can get you something probably, but to avoid all that, if you will cop to this offense, everything else will be dropped. Those are the realities. [LB465]

SENATOR CARLSON: Okay, thank you, Senator Chambers. Thank you. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Lautenbaugh, you are recognized. [LB465]

SENATOR LAUTENBAUGH: Thank you. I have a few questions for Senator Chambers, if he would yield. [LB465]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB465]

SENATOR CHAMBERS: Yes, I will. [LB465]

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SENATOR LAUTENBAUGH: Thank you, Senator. I don't practice in this area personally, but I'm looking at part of the language that's proposed here, and it states--I'll leave out the amendment at this point since it's not really germane to my question--"and all investigations in which the jailhouse informer was involved in any manner, known to the prosecutor or the law enforcement authority." My question is, does that create some additional recordkeeping duty on behalf of the prosecutor or law enforcement authority, or is that already being done, to your knowledge? [LB465]

SENATOR CHAMBERS: We don't even have to go into that because that language is stricken. That was some of the language that the objectors said was too broad, and it could have led to not only what you mentioned, but some other things beyond the knowledge of anybody, even if they exercised due diligence. So to avoid those kind of questions, which we in the committee felt were legitimate, we struck that language, "in any manner." [LB465]

SENATOR LAUTENBAUGH: So by the striking "in any manner," you're deeming that entire provision to be stricken? [LB465]

SENATOR CHAMBERS: No. We just struck "in any manner," and we inserted this language, "during the course of which"--we're talking about the questioning now--"the jailhouse informer was offered or received" this deal, benefit, promise, and so forth. So everything now is restricted to the one event for which the person is being offered the deal, instead of that "in any manner," with reference to other investigations perhaps. [LB465]

SENATOR LAUTENBAUGH: Now, am I reading this wrong then? Because as I read this, even with the amendment, it seems to say you're supposed to disclose all other investigations in which the informant was offered a deal (inaudible) one. [LB465]

SENATOR CHAMBERS: Known to the prosecutor or the law enforcement authority. Because the other language that precedes mentions the times that this person has done this, the times that he or she offered to give testimony and the person was not called to testify. So there are other things in the existing law which have been there... [LB465]

SENATOR LAUTENBAUGH: Right. [LB465]

SENATOR CHAMBERS: ...that we're not touching, and they still are there. So this background information is already required. This information that we're putting in by way of amendment is to make clear what ought to be clear without it. But in drafting the green copy, some language that was too broad was included, and that has been stricken in both instances. [LB465]

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SENATOR LAUTENBAUGH: So the language that I read to you as amended now means that the prosecutor or law enforcement authority has to disclose what? [LB465]

SENATOR CHAMBERS: All investigations in which the jailhouse informant was involved and during which, in those investigations, a deal, the promise, or the inducement was made. [LB465]

SENATOR LAUTENBAUGH: So we're talking about other matters. [LB465]

SENATOR CHAMBERS: Right. Because some of these people are what are known as professional snitches, and they not only do it in the particular jurisdiction, some are brought regularly from Kansas City, Leavenworth, to testify in Douglas County. And in one case under Stu Dornan, the prosecutor offered to make payments of rent, to pay for a guy's girlfriend, to give travel money, and actually paid cash for the testimony. And that was condemned by everybody. That was actually done. So this is not esoteric that I'm talking about, and all of those in the practice know and understand what is being done here. But the questions, I think, are good, so that the record we're compiling will disclose all that we discuss. So any other questions you have, I want you to present them. [LB465]

SENATOR LAUTENBAUGH: Thank you, Senator, and I will. [LB465]

SENATOR LANGEMEIER: One minute. [LB465]

SENATOR LAUTENBAUGH: Thank you. So is there a duty here of additional recordkeeping to create knowledge on behalf of the prosecutor or law enforcement to disclose these other matters? And what is the (inaudible) of knowledge here? [LB465]

SENATOR CHAMBERS: Well, what courts have said when it comes to knowledge, that word "knowledge" doesn't mean actual knowledge; it means what is known or should be known by somebody exercising due diligence. So let's say this person had snitched before and the prosecutor said, I didn't know it, and then later on it is disclosed that this guy has testified and received inducements in this prosecutor's jurisdiction. Then that is a basis for overturning whatever may have been the result of the trial in which that person testified. It may not lead to that, but it could. [LB465]

SENATOR LAUTENBAUGH: Do you have any opinion, or by design, I guess, in this statute, how far does a prosecutor have to go to find that out? [LB465]

SENATOR CHAMBERS: That's up to the prosecutor to determine. Senator Lautenbaugh, I'm not going to draft a law to tell somebody how to do his job, when he knows what his job is. It's like asking me... [LB465]

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SENATOR LANGEMEIER: Time. [LB465]

SENATOR CHAMBERS: Okay. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Chambers, you are recognized. [LB465]

SENATOR CHAMBERS: Mr. President, here's what I'm being asked. Suppose a police officer is going to write tickets, and the officer doesn't know that when he is using radar he must first make a visual observation or estimate of the speed, and then use the measuring device, whether it's radar or VASCAR or whatever. And then they're going to ask me, what about that? I say, well, that goes to the officer's training; it's not my responsibility if they don't know what they're to do. The punishment that courts impose is to overturn decisions that it may have made, a court at a lower level made, when the proper procedures were not followed. Courts ruled a long time ago that law enforcement people cannot violate the law to enforce the law. So if there's fruit from the poisoned tree, as it's called, you use illegal methods to get evidence, that evidence cannot be used. That is the most effective guard against that activity because the illegal evidence is for the purpose of procuring a conviction. If the conviction is overturned when that kind of evidence is used, that is the strongest inducement not to use it, but it still is used. But the courts have provided a remedy. Nothing is going to be fail-safe and foolproof when you're dealing with these areas. But we have to do what we can to bring it as close as possible to the standard of allowing testimony to be used when it has reliability. And if anything is done that raises a question as to its reliability, there must be a disclosure of that. You all are making this thing too complicated. All this law, the original law and this amendment, does is to say that if there are activities on the part of the prosecutor that will raise questions relative to the reliability or trustworthiness of the evidence, then that must be disclosed. The court needs to know. The defendant needs to know. And if the defendant decides, in his or her strategy, to let the jury know, then that is done. When the snitch testifies you use this kind of information to impeach or call questions about this person's reliability. So all this other that's being asked is really beside the point, but I'm willing to answer these questions to know that I'm familiar with this area of the law, and I know a thing or two. But all of this really is not necessary to adequately explain the bill and what it does. What is being asked here is like saying if you've got an incompetent prosecutor, Senator Chambers, and he doesn't properly prepare his witnesses, what about this bill? I say this bill doesn't have anything to do with that at all. Then you say, well, now here are some police officers who make these promises but they don't want to acknowledge they made the promise; what about that? That's not the fault of the bill. That becomes a problem with the prosecution. And these things must be kept distinct if at all possible. So if I seem repetitive, I'm going to continue to do that to try to compartmentalize these notions that are interesting for the purpose of discussion but are not essential to an understanding of or justification of the bill. I continue to be willing to answer any questions, even if they have been propounded

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previously. A person may not have understood what I said. So if it's necessary for me to say it again, I'm prepared to do that. [LB465]

SENATOR LANGEMEIER: One minute. [LB465]

SENATOR CHAMBERS: But I am not going to say I will draft a bill that somehow makes an incompetent prosecutor appear competent. That's not the purpose of this or any other bill. Prosecutors are elected. If that person shows himself or herself to be incompetent, he or she is voted out. But it's not my job to make that person competent or pass a bill that excuses incompetency. Thank you, Mr. President. [LB465]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Doctor the day and visitors introduced.) Returning to discussion on LB465, the committee amendments, Senator Pirsch, followed by Lautenbaugh and Senator Stuthman. Senator Pirsch. [LB465]

SENATOR PIRSCH: Thank you, Mr. President and members of the body, and thank you, Senator Chambers, for your statements. I certainly appreciate the dialogue that's going on. I think that it is helping, I think, for clarification purposes. I do also agree that the committee's amendments do make it lead towards a better product here. And towards clarification, I'm going to continue a line of questions. I do agree that we're not...we don't want to design something that would shield an incompetent prosecutor, but I guess prosecutors, even though competent, sometimes face different standards or levels of what's required of them, competent though they may be. For instance, in a trial, if it's a criminal trial, a prosecutor would have to propound evidence beyond a reasonable doubt. In other types of hearings there's just a clear and convincing evidence; doesn't mean that...I mean, the prosecutor may be competent but those two different standards impose two different duties upon the same competent prosecutor. And so I just want to clarify just exactly what the standard would be with respect to what this bill is imposing upon a prosecutor so that they have a reasonable expectation, though competent, of what they should be performing. So there are three standards, you know, I can think of. First of all, whether you actually knew, as a prosecutor, to disclose that, and that is probably the least restrictive standard. Then there's a...the law could, instead, impose (inaudible) on what did you actually know, the law could say instead, you know, what could you have discovered with due diligence, to looking at all the records that you could have looked at and then conducting a little background. And then there's even looser standards which would have been...even though you conducted due diligence, there was an officer who 12 years ago did do this--he didn't report it to anybody, but--and no reasonable way you could have ever discovered this unless you went around and investigated, talked with every officer who worked on the force for 20 years. So there's differing standards, and I just want to clarify which one would be imposed with this because it could well be that knowledge that an officer had 15 years ago, even the officer believed at the time he wasn't offering a deal or whatnot, that knowledge may be required or be imputed to the prosecutor 15 years later for the

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purpose of this bill. So I want to set a clear and objective standard here. With respect to getting back to the issue of detention, I wonder if Senator Chambers would yield to a clarifying question again. Thank you very much, Senator. [LB465]

SENATOR CHAMBERS: I don't think it's on the record that I said yes, but yes. [LB465]

SENATOR FRIEND PRESIDING [LB465]

SENATOR FRIEND: I apologize. Senator Chambers, you said yes? [LB465]

SENATOR CHAMBERS: Yes, I did. [LB465]

SENATOR FRIEND: You will yield. Thank you. [LB465]

SENATOR PIRSCH: Yes. Okay. With respect to just getting back to the use of the term...the use of the term "custody" has a specific legal meaning, which means that the courts have interpreted a person reasonably believed that he was not free to go at that point in time; that he was being...whether or not the officer told him that or not, any person reasonably would believe they're not free to go. So I'm trying to get at what the term "detention," how much broader than, as you mean it, Senator Chambers, in this bill...you had referred to it earlier as the person believed that he was not free to go. But that would be captured under the terminology "in custody," if that was objectively reasonable. [LB465]

SENATOR FRIEND: One minute. [LB465]

SENATOR PIRSCH: Could you explain the breadth of the difference between "detention" and "in custody?" [LB465]

SENATOR CHAMBERS: Senator Pirsch, without trying to draw a line itself, Supreme Courts have ruled that an officer may detain...they use the term, detain a person without making an arrest or bringing a charge for the purpose of questioning that person, if it's reasonable. If the court, the Supreme Courts, don't draw a line but they use the term, I'm certainly not going to try to do it, and I'm not required to. Courts know these things. These are not words that I pulled out of thin air. Courts use them and have used them, and I think you've seen cases where they've used them. And if the prosecutor doesn't know, that's on him, not me. [LB465]

SENATOR PIRSCH: Okay. You just mean them within the ordinary context that courts have used the term "detention." [LB465]

SENATOR CHAMBERS: Yes. [LB465]

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SENATOR PIRSCH: It's not a specially defined or broader meaning than the courts use. [LB465]

SENATOR CHAMBERS: Right. [LB465]

SENATOR PIRSCH: Okay. Thanks. [LB465]

SENATOR CHAMBERS: And if it was to be different, we would have added additional language. [LB465]

SENATOR PIRSCH: Okay. [LB465]

SENATOR FRIEND: Time. Thank you, Senator Pirsch and Senator Chambers. Senator Lautenbaugh, you are recognized. [LB465]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wonder if Senator Chambers would yield to a few more questions. [LB465]

SENATOR CHAMBERS: Yes, I will. [LB465]

SENATOR LAUTENBAUGH: Thank you, Senator. I want to go back to the point we're making earlier, and I think you said it's not our job to tell the prosecutor how to do his job. It seems like that's what we might be doing, in any event, with this bill. So I want to make sure that we're clear on this. Under the language of the amendment, we're talking about adding this "during the course of which the jailhouse informer was offered or received any deal, promise, inducement, or benefit." You'll agree with that. [LB465]

SENATOR CHAMBERS: Yes. That's what the language is. [LB465]

SENATOR LAUTENBAUGH: Say a police officer is on the scene of an accident and he picks up someone for jaywalking and says, I won't write you up for jaywalking if you tell me what happened. Is that person covered under this? [LB465]

SENATOR CHAMBERS: Are you talking about jaywalking and an accident? These are crimes we're talking about here. We're talking about criminal prosecutions. An accident doesn't involve a crime. [LB465]

SENATOR LAUTENBAUGH: Okay. I'll change my question then. Say we're at the scene of a shooting and a police officer observes someone using an illegal substance in his car. He says, I won't arrest you for that if you tell me what happened. Is that person covered under this? [LB465]

SENATOR CHAMBERS: If that person is going to be asked to testify, yes. If the officer

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asks a person questions and no testimony is given, the officer cannot say, I saw Joe Blow in his car and he said this is what happened. The defense lawyer would object, as you know, on the basis of hearsay. That officer cannot testify to what a third party is going to say. That is a tale of a tale, and it would not be allowed in court. So it's only when the person is going to provide testimony in exchange for the promise and so forth. [LB465]

SENATOR LAUTENBAUGH: Well, Senator, with all due respect, I don't think that's what the amendment says, and maybe you didn't understand my question. [LB465]

SENATOR CHAMBERS: I don't think I understood your question, so ask me again. And tell me where the amendment does not say that. [LB465]

SENATOR LAUTENBAUGH: We're putting a burden on law enforcement or the prosecutors to disclose all known investigations. [LB465]

SENATOR CHAMBERS: Where an inducement or promise was made. [LB465]

SENATOR LAUTENBAUGH: So the hypothetical I gave you, was that an investigation? [LB465]

SENATOR CHAMBERS: There was no inducement given for test...all of this is in exchange for testimony; not just kibitzing or getting information. There has to be testimony because the only thing this goes to is the admissibility of testimony. If the disclosure should be made and it's not, the testimony is not admissible. [LB465]

SENATOR LAUTENBAUGH: Exactly, Senator, and I think you've touched on my problem with this. [LB465]

SENATOR CHAMBERS: Well, that's yours, not mine. [LB465]

SENATOR LAUTENBAUGH: If that disclosure isn't made based upon that hypothetical I threw out of some investigation in another matter, we could open up the testimony or the conviction, in that matter we're discussing, to appeal. [LB465]

SENATOR CHAMBERS: And that is the intention. You haven't read the existing law or listened to the discussion. There are requirements and criteria in the existing law which must be met before the testimony of a jailhouse informant is admissible. It's already here. So if you don't understand it, that's not my problem. You need to find out what's in the law and what we're talking about. [LB465]

SENATOR LAUTENBAUGH: Well, with all due respect, Senator, I've read the law, and you're proposing a change in the law, so I'm trying to get to the effect of the change.

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[LB465]

SENATOR CHAMBERS: And I've said it over and over. The testimony is not admissible if the...if it was known that this person was offered inducements in other investigations and that disclosure is not made, the testimony is not admissible. That's what the law says. That's what the amendment plugs into, and that's what the amendment says.

[LB465]

SENATOR LAUTENBAUGH: So my question to you is, we're imputing the knowledge of the officer on the street to the prosecutor, and if the prosecutor doesn't disclose...

[LB465]

SENATOR FRIEND: One minute. [LB465]

SENATOR LAUTENBAUGH: ...what that officer did in another investigation, then this conviction where the testimony was used could be subject to appeal. Is that correct?

[LB465]

SENATOR CHAMBERS: If the person says, I'll testify if you give me something, the prosecutor has to know that so that the prosecutor can promise the testifier, you're going to get this in exchange. The cop can promise anything he wants to, but if no testimony is given based on that promise, then the bill doesn't apply. If testimony is given and it's given conditioned on receiving a promise, the law applies. I'll...multiply that by ten, so if you ask the same question ten times, that's the same answer you'll get.

[LB465]

SENATOR LAUTENBAUGH: Well, then, Senator, I guess I'm reading your amendment differently than you're reading it, and what I'm saying is it appears... [LB465]

SENATOR CHAMBERS: Well, then I'd suggest you vote against the bill if it affects you that much. If the way you read it seems like it's the wrong thing to do, then you'd vote against the bill. [LB465]

SENATOR LAUTENBAUGH: For the benefit of the body, I believe this amendment and the bill itself requires... [LB465]

SENATOR FRIEND: Time. Thank you, Senator Lautenbaugh and Senator Chambers. Senator Stuthman, followed by Senator Lautenbaugh. Senator Stuthman. [LB465]

SENATOR STUTHMAN: Question. [LB465]

SENATOR FRIEND: Members of the Legislature, the question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate

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cease? All those in favor please signify by voting aye; all those opposed vote nay.
Senator Stuthman, for what purpose do you rise? [LB465]

SENATOR STUTHMAN: I would ask for a call of the house. [LB465]

SENATOR FRIEND: There has been a request for a call of the house. All those in favor of the house going under call please signify by voting aye; all those opposed vote nay. Record please, Mr. Clerk. [LB465]

CLERK: 29 ayes, 1 nay to place the house under call. [LB465]

SENATOR FRIEND: The house is under call. Senators, please record your presence. Those senators outside the Chamber please report to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Cornett, will you please check in. Thank you. Senator Kruse, Senator Burling, Senator Avery, the house is under call. All senators are present and accounted for. Senator Stuthman, how would you like to proceed? [LB465]

SENATOR STUTHMAN: Call-in votes. [LB465]

SENATOR FRIEND: Call-in votes have been approved by Senator Stuthman. [LB465]

CLERK: Senator Burling voting yes; Senator Kruse voting yes; Senator Avery voting no; Senator Rogert voting yes; Senator Adams voting yes; Senator McDonald voting yes; Senator Synowiecki voting yes; Senator Wightman voting yes; Senator Aguilar voting yes; Senator Wallman voting yes; Senator Nelson voting yes. [LB465]

SENATOR FRIEND: Record please, Mr. Clerk. [LB465]

CLERK: 19 ayes, 9 nays to cease debate, Mr. President. [LB465]

SENATOR FRIEND: Debate does not cease. Senator Lautenbaugh, you are the next speaker. I will raise the call, by the way. I do raise the call. Senator Lautenbaugh, you are recognized. [LB465]

SENATOR LAUTENBAUGH: Okay, thank you. Thank you, Mr. President. I just want to make sure I have a correct understanding of this, and I'm sure Senator Chambers is going to correct me if I'm wrong. But in the body of this bill and in the amendments, we're talking about two separate crimes. I'll call one the underlying crime where you're using a jailhouse snitch's testimony. If that's the case, there are disclosures that are required of the prosecutor in this if you're using that type of testimony as defined herein. So my other hypothetical was, if this witness was a witness to something else that was just being investigated, and was offered a deal--my hypothetical there was a shooting

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and this witness was observed using drugs in his car--and the police said, I won't arrest you for that if you tell me what happened in the shooting, I believe, under the language of the amendment, that would be a deal or benefit offered to this witness. And the prosecutor or the law enforcement agency, as this reads, would have to disclose that. Here is my problem: We're imputing the knowledge of the officer on the street, in this totally unrelated matter, to the prosecutor. As you say, it's known to the law enforcement agency, which then means all of its members presumably. How is the prosecutor going to reliably know of that, and if the prosecutor doesn't know of it or the law enforcement chief of police doesn't disclose what the officer on the street did because he just doesn't know, is the conviction in the underlying matter subject to appeal for nondisclosure? My fear is that this bill opens a complete can of worms that we may not want to open, or maybe we do, some of us. But I'm just saying, as I read the bill, that's a serious problem and a pretty substantial burden to put on the prosecutor and the law enforcement agency, as it's referred to. I don't know what those terms mean, but they're limited in any way as far as a law enforcement agency; it may be defined elsewhere. But I believe, based upon our discussion, the intent here is to impute the knowledge of that officer on the street, in a completely unrelated investigation where he offered a benefit of the witness, to the law enforcement agency as a whole, and this bill creates a duty to disclose that. And in my mind, that's a burden that may not be met very often without a lot of recordkeeping, a lot of additional recordkeeping, and we might have a lot of convictions that go up on appeal for something that wasn't known, wasn't disclosed but someone argues you should have known, Prosecutor, because you should have asked everyone in your office or every cop on the street. Now, that's how I interpret this, and I'm confident Senator Chambers will tell me if I'm wrong, so I will yield. [LB465]

SENATOR FRIEND: Senator Chambers, you have 2 minutes and 35 seconds. [LB465]

SENATOR CHAMBERS: Thank you, Mr. President; thank you, Senator Lautenbaugh. Remember this: Cops can make promises but they don't make deals that result in a change in how the prosecution occurs. I'm sure Senator Pirsch will verify this: If a prosecutor is going to make a deal, the prosecutor makes it. And if this person is going to testify, that person is going to tell the prosecutor, I told a cop out there the only reason you know that I'm here because this cop told me that if I testify then this drug charge is not going to be brought against me; but if I don't testify, he's going to throw the book at me. The prosecutor then knows that an offer had been made. If, despite that, the prosecutor wants to bring this person's testimony forth, then the prosecutor must disclose that an offer had been made and that the prosecutor is going along with it. Remember, we're dealing with people who would not testify without being offered the inducement. If the inducement is not offered, the person is not going to testify. If you try to force somebody to testify, it's like Alberto Gonzales--I don't recollect; I don't recall. So you cannot force an unwilling witness to testify, and if you're wise you won't call that person. [LB465]

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SENATOR FRIEND: One minute. [LB465]

SENATOR CHAMBERS: If the person testifies--that's what I have to keep emphasizing--if and only if the person is going to be called as a witness, must this disclosure be made. It must be made ten days before the trial, so the defense lawyer now knows. And at that point the prosecutor can decide whether I'm going to call this guy or not. Maybe they've done some checking and there are other problems with this witness, so he won't be called. If testimony is not given, the law has no application whatsoever, no matter how many other conversations, how many promises, how many inducements, or anything else that happened. There must be testimony. The only thing that occurs is that in order for that snitch testimony to be admissible, the disclosure has to be made. [LB465]

SENATOR FRIEND: Time. [LB465]

SENATOR CHAMBERS: Thank you, Mr. President. [LB465]

SENATOR FRIEND: Thank you, Senator Chambers and Senator Lautenbaugh. Senator White, you are recognized. [LB465]

SENATOR WHITE: Thank you, Mr. President. I would like to make a generalized statement, and then ask Senator Chambers a couple questions. Generally speaking, in order to uphold a conviction, prosecutors have an obligation to reveal already any exculpatory information they may have. That can be information in the hands of a police officer that the prosecutor never learns of, and yet the failure to do that regularly results in, first of all, innocent people being convicted, but also then people being released from jail whether or not they were innocent. So I don't know that this is actually any additional burden other than one generally they have to bear anyway. Then if Senator Chambers would yield to a couple of questions. [LB465]

SENATOR FRIEND: Senator Chambers, will you yield to a couple questions? [LB465]

SENATOR CHAMBERS: Yes, I will. [LB465]

SENATOR WHITE: Senator Chambers, I have never done criminal defense work, but I've spent a lot of time representing inmates and guards in civil rights arising out of the environment of a prison. Do you have personal experience that you can share with people who have been pressured either through actual overt coercion or through the force of looking at a life sentence who have falsified testimony in order to try to change what will happen to them in the system otherwise? [LB465]

SENATOR CHAMBERS: Well, all I can say is what's been told to me. I've been contacted by inmates who were told that--and now these are not criminal trials but

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disciplinary hearings--that if they don't say is wanted against a given inmate, then they're going to have certain actions taken against them, and they would like me to contact the warden or the director of Corrections or the Ombudsman to intervene at this point before anything further is done. So efforts are made to pressure people to say things that they don't know to be true. [LB465]

SENATOR WHITE: And, of course, the consequences of those are, these individuals could spend a lot more time in jail. [LB465]

SENATOR CHAMBERS: Yes. And I do know an incident--this man I knew personally. He had a scar across his face. Now, he wasn't being asked to testify against somebody else. He was told, I know you didn't do this but with your appearance and your record, they're going to find you guilty. So I suggest that you let me make a deal and you'll plead to something so that you'll get a lesser sentence than what you'll get if you go to trial on this. And he knew the man hadn't done the crime. [LB465]

SENATOR WHITE: Thank you, Senator Chambers. I would like to tell the body that my brother is a public defender in Cook County, Illinois. He regularly advises me that innocent people do go to jail, and frequently they go to jail because defense lawyers don't do their job, but also because police officers don't come forward with evidence that might lead a jury to conclude somebody else did the crime. I support this bill because of having grown up in a household of a judge, first a prosecutor, then a trial judge, then a Supreme Court judge, with a brother who is a public defender. Despite our best efforts, the criminal justice system regularly makes mistakes. What this bill will do, as far as I can tell, is simply enforce the fact that we best trust citizens in a jury to make decisions. Any time we withhold information from citizens of the jury, I think we do our fellow citizens in the system a disservice. Therefore, I will support it. Thank you. [LB465]

SENATOR FRIEND: Thank you, Senator White and Senator Chambers. Senator Ashford, there are no further lights on. You are recognized to close on AM485, the Judiciary Committee amendments. [LB465]

SENATOR ASHFORD: Thank you, Mr. President and members. Just to try to bring this into a little bit of context, it's been a good discussion and good questions were asked, and to the point that the questions Senator Pirsch and Senator Lautenbaugh asked were good questions. There is a point beyond which, though, we cannot find words in the English language to further define what we mean. And this is not a criticism of the questions, because they are good questions. I think the language that we have used to define the terms in this...in these committee amendments is appropriate, it's consistent with other statutory definitions and prescriptions. So I...though I certainly think that getting on the record the concerns raised is important, I do think the language is appropriate and does give to prosecutors at least notice from this body that these statements that are made after an inducement is made or a deal is made are

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statements that need to be given to the defense attorney so the defense attorney can prepare accurately and adequately for a trial. That's really all we're talking about here. We're talking about evidence that is produced at a criminal trial where the freedom of a defendant is in question. And so it's important stuff, it's important evidence. I just would remind the body that we as the Legislature have already very clearly stated in this...in the law which is being amended here, 29-1928, that the Legislature finds and declares that the interests of justice may be thwarted by unreliable testimony at trial; that there is a compelling state interest in providing safeguards against the admission of testimony, the reliability of which may be or has been compromised through improper inducements. The Legislature further finds and declares that the testimony of a jailhouse informer is sometimes unreliable. A jailhouse informer, due to the receipt or promise of a benefit, is presumed to provide testimony that may be unreliable. That's pretty heady stuff in statute to presume that the testimony of an informer is deemed to be presumed to be unreliable. So we're not talking about a witness who has no criminal record. We're not talking about a bystander who observes some sort of crime. We're talking about someone who has, in most cases, has a history of criminal activity. We're talking about testimony that will be potentially introduced at trial where the freedom of the defendant is in question. With that, Mr. President, I think we have certainly talked the language...talked about the language to a significant degree and I'm not going to go back over it. It's fairly clear, I believe. The words used, I think, are clear. I would move the committee amendments so that we could get on with debating the bill. Thank you, Mr. President. [LB465]

SENATOR FRIEND: Thank you, Senator Ashford. Members of the Legislature, you have heard the closing on the Judiciary Committee amendments, AM485. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB465]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB465]

SENATOR FRIEND: The amendment is adopted. [LB465]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB465]

SENATOR FRIEND: Senator Chambers, there are no senators wishing to speak. You are recognized to close on LB465. [LB465]

SENATOR CHAMBERS: Mr. President, members of the Legislature, the drafting of the committee amendments was done aimed specifically at the issues raised by those who objected to the bill. Senator Carlson said the other day, if people had the opportunity to come in and testify against a bill they can. No prosecutor has attacked anything in the bill. And when these police agencies said that it was too broad we narrowed it the way

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they wanted it narrowed. These issues are esoteric, theoretical and speculative. In the real world they are not going to arise. If this information...let's say that we take Senator...no, I don't want to take his example because I might misstate it. But let's say we have a situation where there is a question as to whether or not something needs to be disclosed. The judge is the one handling this case. If I'm the defense lawyer, I cannot object to testimony from Senator Aguilar and say, well, I think that at some time he had a deal made. That is not going to stand as an objection. The judge is going to ask me, based on what? I've got to produce something. Now if I can say the one being asked to give this testimony in fact did receive an offer and it was not disclosed, if the judge wants to have what they call a sidebar, if the prosecutor wants to ask for a recess, there are ways to handle these things without saying we're going to try to write everything into a law. This is not a...look, a trial is not a situation where you have two sides battling and the whole thing is put on automatic pilot. You have a judge who is like a traffic director and a referee and a manager. And there are issues that can be raised and if a jury is present the judge can excuse the jury. The judge can consider things in his or her chambers. Judges have a lot of discretion as to how they're going to resolve issues. In the vast majority of cases what is being talked about here as a concern is not going to arise because it didn't arise among those who are going to be dealing with these laws. But what I will do, I think the bill should advance, I will discuss it further, if Senator Lautenbaugh chooses to, and see what I can do to allay his concerns. But I'm not going to try to write a whole lot of things into a bill. If we use the term "know," you can look in various legal publications for the definition of the term "know." Courts understand. Courts don't require that you put into the statute know or should have known, should have checked documents, should have done this, should have done the other. The law in America is not just what's in the statute book, it's not just what's in the constitution, it is decisional law. And in many instances the decisional law seems to fly in the face of what is written in the statute. But the decisional law is often what courts will rely on. So we're not dealing with tyros, as might be the case in the Legislature. We're dealing with judges who handle these issues all of the time. We're dealing with prosecutors who have gone over the top, as I mentioned, where actual money was given to a guy. And as it turned out, the jury said these two guys are so incredible,... [LB465]

SENATOR FRIEND: One minute. [LB465]

SENATOR CHAMBERS: ...they don't even know why they were presented, and they were trying to have two guys convicted of murder, framed for murder. And the jury went further and said that the police botched the investigation because there was a cigarette butt at the scene and they didn't even take DNA evidence. They went on and on and on. So when a prosecutor is going to rely on snitch testimony, a prosecutor is the one rolling the dice. Remember, when the person is offered something then that compromises the integrity of the testimony. If an ordinary citizen is to testify, this doesn't apply. But if that ordinary citizen testifies, the defense lawyer is allowed to do anything within the law to challenge that person's credibility to testify. All of those things can lead us far afield from

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a very simple, straightforward bill. [LB465]

SENATOR FRIEND: Time. [LB465]

SENATOR CHAMBERS: What I'm asking is that you advance it. Thank you, Mr. President. [LB465]

SENATOR FRIEND: Thank you, Senator Chambers. Members of the Legislature, you've heard the closing on the advancement of LB465 to E&R Initial. All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB465]

CLERK: 32 ayes, 5 nays, Mr. President, on the advancement of LB465. [LB465]

SENATOR FRIEND: LB465 does advance. (Visitors introduced.) Mr. Clerk, you have items? [LB465]

ASSISTANT CLERK: Mr. President, a series of new bills. (Read LB1101-1149 by title for the first time, Legislative Journal pages 327-335.) [LB1101 LB1102 LB1103 LB1104 LB1105 LB1106 LB1107 LB1108 LB1109 LB1110 LB1111 LB1112 LB1113 LB1114 LB1115 LB1116 LB1117 LB1118 LB1119 LB1120 LB1121 LB1122 LB1123 LB1124 LB1125 LB1126 LB1127 LB1128 LB1129 LB1130 LB1131 LB1132 LB1133 LB1134 LB1135 LB1136 LB1137 LB1138 LB1139 LB1140 LB1141 LB1142 LB1143 LB1144 LB1145 LB1146 LB1147 LB1148 LB1149]

CLERK: (Read LB1150-1162 by title for the first time.) And that's all that I have at this time, Mr. President. (Legislative Journal pages 335-337.) [LB1150 LB1151 LB1152 LB1153 LB1154 LB1155 LB1156 LB1157 LB1158 LB1159 LB1160 LB1161 LB1162]

SENATOR FRIEND: Thank you, Mr. Clerk. Mr. Clerk, we will proceed to General File, LB586. [LB586]

CLERK: Mr. President, LB586 is a bill by Senator Cornett. (Read title.) The bill was heard on January 17, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM402, Legislative Journal page 693, First Session, 2007.) [LB586]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Cornett, you are recognized to open on LB586. [LB586]

SENATOR CORNETT: Thank you, Mr. President and members of the body. LB586 closes a loophole that has caused some serious problems for some patients over the years. Current law allows hospitals, when they have to file a lien to file for an amount

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that is reflected on the amount of bill charges. As we all know, where there is insurance in place there will be a discount in place. In other words, when a patient has health insurance, the patient isn't required to pay bill charges but a discounted amount. Having laid a groundwork for what the problem is, Senator Ashford and the Judiciary Committee have amendments which provide a good solution to the problem. I will let him introduce the amendment and I will have a few comments after he explains the amendment. [LB586]

SENATOR FRIEND: Thank you, Senator Cornett. Senator Ashford, as Chair of the Judiciary Committee, you're recognized to open on the amendments. [LB586]

SENATOR ASHFORD: I didn't...thank you, Mr. President. I didn't realize our committee amendments were that great. But (laugh) I think they're good committee amendments, don't get me wrong. (Laugh) But I didn't know they were all that extensive. But...and I know Senator Cornett is going to talk a little bit more about the policy of the act. Essentially, as Senator Cornett has suggested that if there is an insurance policy in place, and first of all let me thank my Vice Chair, Senator Lathrop, who has been working on this bill for some time and again utilizing his expertise in the area of personal injury law to deal with these issues, and they are important issues. Essentially, as Senator Cornett suggested, there is a...if there is an insurance policy in place and the injured, the party is...has filed a lawsuit in connection with that particular injury, that the healthcare provider would be required to file a lien up to the amount of that insurance policy. I believe that's a...the best way to put it, generally. The committee amendments...and I believe the practice has been, and I'm sure Senator Lathrop will talk about it and Senator Cornett, that oftentimes under current law the lien that is filed in the case, and Senator Lathrop can explain how that is done, but there is a lien filed on the settlement, in effect, of a personal injury case. Oftentimes the hospital or the healthcare provider will file a lien for the usual and customary charges, which oftentimes exceed the amount of the insurance contract between the patient, the plaintiff so to say, and the insurance company. So, in effect, there is a potential windfall that might result, would result to the healthcare provider. But I know we'll have more discussion about that. Specifically on the committee amendments, Senator Dierks has offered a bill in the Judiciary Committee, LB202, which deals with chiropractor liens. And that bill is still in committee and one of the reasons for that is our committee felt that LB586 really dealt with the issue of chiropractor liens in a fair and equitable manner, and thereby did include chiropractors as...within the definition of healthcare providers in this bill. So under LB586, all those of you concerned about the ability of chiropractors to file liens to protect their services, the services that they provided to a particular injured party, the chiropractor would in fact be able to do so. And I believe I am correct in stating this, and maybe Senator...if I'm not, Senator Lathrop will correct me when he speaks on this. But if there is not an insurance policy involved with a limitation on the amount the chiropractor could receive covered by that policy, that the lien the chiropractor could file would be up to the total or full amount of the services provided by the chiropractor. And I

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think I'm right on that. Senator Lathrop is shaking his head in an affirmative...affirmatively. Also, it does remove...again, this is...Senator Lathrop worked with the Hospital Association and other providers on this...on these amendments and we removed Medicaid and Medicare from the discount provision of the bill really as an accommodation to these healthcare providers so that, in many cases, Medicare and Medicaid pays evens below cost, and that if a lien were filed at that rate, the hospital would be filing a lien, theoretically, at below cost. So we took that out, we took that out and limited the lien to the insurance contract limits. And that was...and I apologize, maybe I'm somewhat unartful in my terminology. But I believe that's the intent of the committee amendments, Mr. President. I would certainly urge their adoption. [LB586 LB202]

SENATOR FRIEND: Thank you, Senator Ashford. Members of the Legislature, you've heard the opening on AM402, the Judiciary Committee amendments. There are senators wishing to speak. Senator Langemeier, you are recognized. [LB586]

SENATOR LANGEMEIER: Mr. President, members of the body, I rise to make one clerical change here. Many of you have been getting feedback from your chiropractors across the state to support an amendment that I'm going to offer. And I am not the one offering the amendment, it is Senator Dierks's amendment, AM1575, which they are referencing to. So I just want you all aware that if you've gotten some contact to watch for my amendment, I want to refer you to Senator Dierks's amendment. AM1575 is the amendment they are talking about. And we'll see what Senator Dierks has planned for that as we get to it. I just want everybody to be aware of that so you're looking for the right thing to do as you wish. Thank you, Mr. President. [LB586]

SENATOR FRIEND: Thank you, Senator Langemeier. Mr. Clerk, you have an item on the desk? [LB586]

CLERK: Mr. President, Senator Dierks had filed AM1575. Senator, I have a note you want to withdraw, though, at this time. [LB586]

SENATOR FRIEND: AM1575 is withdrawn. Back to AM402, the Judiciary Committee amendments. There are senators wishing to speak. Senator Cornett, you are recognized. [LB586]

SENATOR CORNETT: Yes. I want to, one, urge the body to support this amendment. This is not a new issue. We've seen much improvement in billing and collection practices with our hospitals in Nebraska. To let the body know, this...what we're proposing in the amendment is what Alegent Hospitals already have in their policy and are currently doing. Their policy requires that a denial of health insurance coverage must be received before they will file a lien. As a matter of public policy we want the provider to seek reimbursement pursuant to available insurance coverage rather than a

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race to the courthouse. Also as a matter of public policy we have passed, in recent years, requiring insurers to promptly pay health insurance claims. This amendment today provides...makes certain that where health insurance is involved, the patient, the provider, and the insurer all know and understand the amount in question is the amount reimbursable pursuant to health insurance contract. To let the body know at least from what my understanding is now, and I believe why Senator Dierks withdrew his amendment, are the chiropractors are in agreement with this amendment...with the committee amendment. And I urge the body to support this and thank you. [LB586]

SENATOR FRIEND: Thank you, Senator Cornett. Senator Lathrop, you are recognized. [LB586]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I stand in support, obviously, of the committee amendment as well as Senator Cornett's bill, LB586. I will also represent to the body that we have worked with two different groups to bring this bill before the body in the condition that it's in with the amendment. We have worked with the Hospital Association, who has recognized the need for this legislation and is agreeable with the language. Likewise, we have worked with the chiropractors. And, as Senator Ashford indicated, the chiropractors had a stand alone bill to allow themselves to be included on the list of care providers who can file liens in personal injury claims, and this bill is the vehicle by which the chiropractors will be added to that list. They have, in consideration for being included on the list, agreed to support the bill. And I think they fully support the bill, and now enthusiastically support the bill. I want to take a few minutes to talk about why this is necessary and a little bit about what these hospital liens are about. When someone has been involved in an automobile accident, for example, that is not their fault and they are treated at the hospital, they go into the hospital and the question is, who should pay the bill? That bill can be paid by health insurance, it can be paid by medical payment coverage or the liability coverage of the person that caused the accident. And the hospital has these choices: it can bill health insurance, or it can wait on its money and file a lien, which is what the law permits at present, and they can wait on their money until after a personal injury settlement is resolved. The bill today addresses the concern that some people go to the hospital and choose their providers out of their provider books that they get from their employer. For example, if you have a job at a tire company or somewhere and you get the employee manual and it says, when you have a problem and you need care you will go to these providers because they've worked out a deal for a lower price. The difficulty comes in, and what this is intended to correct is the practice of people who actually go to a provider because their insurance company sent them there because they've negotiated a lower rate with that provider. And the provider doesn't bill health insurance because he doesn't want to take a discount, so he files a lien. And he waits until a personal injury settlement is resolved. And the inequity there is that the person showed up at the provider's door because of the health plan, and then the provider is not billing the health plan because they would suffer a discount in the bill. This simply is a policy that will

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encourage care providers to bill health insurance promptly so there aren't prompt-pay issues. It will facilitate the providers being paid sooner and keep people who have been injured, who have a claim, from staying out of collection while their case is pending. The bill only applies...the measure is with respect to private insurance. It does not set a ceiling on the lien based on Medicare or Medicaid but only private health plans. It is good policy. It is a compromise with the Hospital Association and with the chiropractors. I would encourage you to support not only the committee amendment but Senator Cornett's LB586. Thank you. [LB586]

SENATOR FRIEND: Thank you, Senator Lathrop. Members of the Legislature, we are discussing AM402, Judiciary Committee amendments. Senator Dierks, your light is next, you are recognized. [LB586]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I understand that many of you have been getting contacted by chiropractors about the amendment that I had and have subsequently withdrawn. The leadership, the officers of the association have informed me that they are happy with that decision and they want us to go ahead with the amendment that the Judiciary Committee came up with. And so that's why I withdrew the amendment that I had up there. There is some confusion, I think a lot of times, in how to interpret legislative language. And I think that we got by some of that confusion and found out exactly that what the committee has done is what we really need to have done. So with that, I'd like to encourage your support of the committee amendment as it exists. Thank you. [LB586]

SENATOR FRIEND: Thank you, Senator Dierks. There are no other senators wishing to speak. Senator Ashford, you are recognized to close on the Judiciary Committee amendments, AM402. [LB586]

SENATOR ASHFORD: Thank you, Mr. President. I would just close. I think Senator Lathrop certainly, and Senator Cornett, adequately explained the committee amendments and how we got there. I appreciate Senator Dierks's withdrawal of his amendment and his willingness to work with us on this bill. I believe the interests of the chiropractors are appropriately taken care of here. And with that, I would move the committee amendments. Thank you, Mr. President. [LB586]

SENATOR FRIEND: Thank you, Senator Ashford. Members of the Legislature, you have heard the closing on the committee amendments, AM402. The question is, shall the committee amendment to LB586 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Record please, Mr. Clerk. [LB586]

ASSISTANT CLERK: 38 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB586]

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SENATOR FRIEND: Committee amendments are adopted. [LB586]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill. [LB586]

SENATOR FRIEND: Back to discussion of LB586. Senator Cornett, there are no senators wishing to speak. You are recognized to close on LB586. Senator Cornett waives closing. The question is, shall LB586 advance to E&R Initial? All those in favor please signify by voting aye; all those opposed vote nay. Have all senators voted who wish to? Record please, Mr. Clerk. [LB586]

ASSISTANT CLERK: 39 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB586]

SENATOR FRIEND: LB586 does advance. LB619, on with General File. [LB586 LB619]

ASSISTANT CLERK: (Read title.) The bill was introduced by Senator Pirsch on January 17 of 2007, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments attached. (AM360, Legislative Journal page 693, First Session, 2007.) [LB619]

SENATOR FRIEND: Senator Pirsch, you are recognized to open on LB619. [LB619]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I have introduced actually three bills last year--LB618, LB619, and LB620--that were sent to the Judiciary Committee. And they all pertain to the same subject matter. In retrospect, they should have been better...probably encompassed in just one bill. And be that as it may, these are...this is not sweeping measures but deal just with the operations in the Treasurer's Office to make it more efficient and I think better for the people of Nebraska. LB619 provides that any time the State Treasurer assesses a return check charge or a charge for an electronic payment not accepted against a state agency, they can pass the cost along to the payer of the check or the person who authorized the bad electronic payment. The charges assessed by the state agency shall be used to make payment to the State Treasurer and to reimburse the state agency for the assessments and any administrative costs incurred by the agency. The bill also provides that any charges collected by the Treasurer shall be credited to the Treasury Cash Management Cash Fund and shall be used to offset the expenses incurred in the collection of state agency bad debt. There are some amendments that are made to LB619 by the, I believe, by the committee that the charges assessed by the State Treasurer or agency cumulatively shall not exceed \$30. And I support those changes, I think they're fair to the bill. And from a...private collectors cannot...are allowed to charge more, \$35 by state law I believe, but I think it's fair. And I think that's...Senator Chambers had indicated a desire to have that cap on. So I do support the amendments to it and would urge you to pass the bill...pass the amendments and pass the bill along. [LB619 LB618 LB620]

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SENATOR FRIEND: Thank you, Senator Pirsch. Members, you have heard the opening on LB619. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair, you are recognized to open. [LB619]

SENATOR ASHFORD: Thank you, Mr. President, members. And Senator Pirsch correctly described the purpose of the bill. When originally introduced, it did not...the bill did not have a cap on the fee charged by the State Treasurer or state agency for returned checks. I believe that's correct. We inserted a fee of \$30. And really the committee amendment simply does that, it caps the fee on a returned check at \$30 so that there will be some cap to it. So with that, I would move the amendments, Mr. President, committee amendment. [LB619]

SENATOR FRIEND: Thank you, Senator Ashford. Members, you have heard the opening on AM360, Judiciary Committee amendments. Senator Ashford, there are no senators wishing to speak. You are recognized to close. Senator Ashford waives closing. Members, the question is, shall AM360, the Judiciary Committee amendments, be adopted? All those in favor please signify by voting aye; all those opposed vote nay. Record please, Mr. Clerk. [LB619]

ASSISTANT CLERK: 25 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB619]

SENATOR FRIEND: Committee amendments are adopted. Back to discussion, excuse me. [LB619]

ASSISTANT CLERK: Mr. President, Senator Pirsch would move to amend with AM1576 (sic). (AM1610, Legislative Journal page 338.) [LB619]

SENATOR FRIEND: Excuse me, sorry, Mr. Clerk. Senator Pirsch, you are recognized to open AM1576. [LB619]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. This is a very simple amendment to the original bill. My amendment would simply, on page 3, line 23, strike "Treasury Management Cash" and insert "General" Fund. So what this effectively does is then whenever these checks, returned checks, which fees then are imposed upon, those monies would flow not to the Treasury Management Cash Fund but rather to the General Fund. So I think this is a very palatable amendment and I'd urge you to support this as well. It results in the monies flowing to the General Fund for these unreturned check fees. [LB619]

SENATOR FRIEND: Thank you, Senator Pirsch. Members, you have heard the opening on AM1576. Before we proceed, Mr. Speaker, Speaker Flood, you are recognized for

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an announcement. [LB619]

SPEAKER FLOOD: Thank you very much, members. I just heard from the Revisor's Office. They are going to be bringing down the final three-parts that have been requested, with the exception of one. If you do not see your bill or the one that you're intending to introduce prior to the deadline, which would be approximately noon today, please make contact with their office. But we are nearing the deadline for bill introduction which will occur upon adjournment today. So if you are waiting for a bill, it should be down. If you don't see it, make contact with the Revisor's Office. Thank you. [LB619]

SENATOR FRIEND: Thank you, Speaker Flood. Back to discussion of LB619 and AM1576. Correction, we are on AM1610. My apologies. Senator Pirsch, there are no senators wishing to speak on AM1610. You are recognized to close. [LB619]

SENATOR PIRSCH: Thank you, Mr. President. I just urge the body to pass the amendment. Thank you. [LB619]

SENATOR FRIEND: Thank you, Senator Pirsch. Members of the Legislature, you have heard the closing on AM1610. The question is, shall AM1610 be adopted? All those in favor please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB619]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of AM1610, Mr. President. [LB619]

SENATOR FRIEND: The amendment is adopted. [LB619]

ASSISTANT CLERK: Mr. President, Senator Pirsch would offer AM1576. (Legislative Journal page 269.) [LB619]

SENATOR FRIEND: Senator Pirsch, now you can open on AM1576. [LB619]

SENATOR PIRSCH: (Laugh) Thank you, Mr. President, members of the body. This amendment, AM1576, was actually just a Bill Drafter's amendment, a technical clarification. They caught a little numbering, I think, technical mistake. So this really doesn't have much substance. I'd urge you to pass this amendment as well so that it is numbered correctly. [LB619]

SENATOR FRIEND: Thank you, Senator Pirsch. Members of the Legislature, you have indeed now heard the opening on AM1576. There are no senators wishing to speak. Senator Pirsch, you are recognized to close. [LB619]

SENATOR PIRSCH: I'll waive. [LB619]

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SENATOR FRIEND: Senator Pirsch waives closing. Members, the question is, shall AM1576 be adopted? All those in favor please signify by voting aye; all those opposed vote nay. Have all senators voted who wish to? Record please, Mr. Clerk. [LB619]

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of AM1576, Mr. President. [LB619]

SENATOR FRIEND: AM1576 is adopted. [LB619]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB619]

SENATOR FRIEND: Thank you, Mr. Clerk. Back to discussion of LB619. There are no senators wishing to speak. Senator Pirsch, you are recognized to close on LB619. [LB619]

SENATOR PIRSCH: I'd just urge the body to pass it as amended. [LB619]

SENATOR FRIEND: Members of the Legislature, you've heard the closing on LB619. All those in favor of the advancement to E&R Initial please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB619]

ASSISTANT CLERK: 36 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB619]

SENATOR FRIEND: LB619 does advance. [LB619]

ASSISTANT CLERK: The next bill, Mr. President, LB620, also offered by Senator Pirsch. (Read title.) The bill was read for the first time on January 17 of last year, referred to the Judiciary Committee. The committee reports the bill to General File with committee amendments attached. (AM361, Legislative Journal page 693, First Session, 2007.) [LB620]

SENATOR FRIEND: Senator Pirsch, you are recognized to open on LB620. [LB620]

SENATOR PIRSCH: Yeah, thank you, Mr. President, members of the body. And again, I appreciate the body's tolerance. This probably should have been brought forward in one bill. LB620 provides that rather than a payer issuing three payments resulting in returned check charges or electronic payments not accepted to the State Disbursement Unit, the payer may now issue only two payments resulting in returned check charges or electronic payments not accepted before the payer is required to pay all future payments by money order, cashier's check, or certified check. Additionally, this bill designates a place for the fees collected for return check charges to be remitted to the

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State Disbursement Unit Cash Fund created under the bill. It designates that the funds collected in the SDU Cash Fund shall be used to offset expenses incurred in the collection of child support bad debt. The bill also mandates that the SDU must use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical for the collection and disbursement of support payments. Finally, LB620 provides that if an employer has more than 50 employees and has an employee with a child support order then the employer shall remit their child support payments electronically. This is...was also brought to the Judiciary Committee. They've incorporated elements from LB618 into the bill as well, rather than have that as a standalone bill. I do support that. I think it helps for time's sake not to belabor it. But I do support the amendments that Senator Chambers and other members of the Judiciary Committee added to the bill. I think it makes it a better bill, and I appreciate their input. And having said that, I'd just urge you to support it. [LB620 LB618]

SENATOR FRIEND: Thank you, Senator Pirsch. Members, you have heard the opening on LB620. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as the Chair of the committee, you're recognized to open on the amendments. [LB620]

SENATOR ASHFORD: Yeah, you've got to be tired of listening to me, Mr. President. But I do have committee amendments which, quite...which incorporate other bills, specifically LB618, other legislation or proposed legislation which is being held in committee. First of all, on electronic collection, the committee amendments provide that the State Treasurer can collect a fee electronically from the payor of a bad check or unaccepted electronic payment to a state agency if the agency approves. The fee will be equal to the cost of processing the bad payments, but shall not exceed \$30. The fee shall be remitted to the Treasury Management Cash Fund and used to offset the cost to the State Treasurer in the collection of the bad debt. So we have a mechanism in this bill to deal with that bad check collection process. Secondly, it imposes...the committee amendments impose a limitation on bad checks. Explicitly, it limits a payor to two bad debt payments in a year before the state can refuse to accept payments by check. And three, it caps the fee at \$30. So again, these are state agencies, Treasurer, others coming in and saying, we need to be able to assess these charges in order to efficiently collect these monies. And I appreciate Senator Pirsch in bringing the bill to us and him working with us to make sure that we have a fair and equitable way to do this. So thank you. And I would urge the adoption of the committee amendments, Mr. President. [LB620 LB618]

SENATOR FRIEND: Thank you, Senator Ashford. Members, you have heard the opening on Judiciary Committee amendments, AM361. Senator Ashford, there are no senators wishing to speak. Senator Ashford waives closing. Question is, shall AM361 be adopted? All those in favor please signify by voting aye; all those opposed vote nay.

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Have all senators voted who wish to? Record please, Mr. Clerk. [LB620]

ASSISTANT CLERK: 28 nays, 0 nays on the adoption of Judiciary Committee amendments, Mr. President. [LB620]

SENATOR FRIEND: AM361 is adopted. [LB620]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB620]

SENATOR FRIEND: Back to discussion of LB620. There are senators wishing to speak. Senator Synowiecki, you are recognized. [LB620]

SENATOR SYNOWIECKI: Thank you, Senator Friend. Senator Pirsch, would you yield? [LB620]

SENATOR FRIEND: Senator Pirsch, will you yield to a question? [LB620]

SENATOR PIRSCH: I will, thank you. [LB620]

SENATOR SYNOWIECKI: If I'm following this correctly, the previous bill, we indicated the bill essentially required that all fees for these bad checks goes to the General Fund. [LB620]

SENATOR PIRSCH: That's correct. [LB620]

SENATOR SYNOWIECKI: Is that what we did in the previous bill? [LB620]

SENATOR PIRSCH: That's correct. [LB620]

SENATOR SYNOWIECKI: And then this bill the fees, which are not to exceed \$30, are remitted to the Treasury Management Cash Fund. [LB620]

SENATOR PIRSCH: That's correct. Yeah, there was no opposition brought up to that. Everyone, I think, at the committee and all the input...I don't think there was one objection for that flowing to that...the SDU to use to cover the actual costs of their collection there for the child support. I think it makes the child support system, the integrity of that, more complete, to make sure it's... [LB620]

SENATOR SYNOWIECKI: So this is specific to child support payments? [LB620]

SENATOR PIRSCH: Yeah, that is correct. This...this... [LB620]

SENATOR SYNOWIECKI: And the previous bill would be, for example,... [LB620]

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SENATOR PIRSCH: More broader, generally encompassing, that could include Game and Parks or university or what not, the prior bill. [LB620]

SENATOR SYNOWIECKI: And this Treasury Management Cash Fund, is that...are we creating that with this bill? And what will that fund? What will be the purpose of that fund? [LB620]

SENATOR PIRSCH: If you can...if I could have just a minute here. I think that we...my understanding is that we would be creating this just as a mechanism. The SDU, the agency that collects the child support payments and has to then incur the costs associated with these bad checks then would...the idea underlying this is that those costs then would be, I guess, incurred by the SDU, and thus this Treasury Management Cash Fund would be used to offset those expenses. [LB620]

SENATOR SYNOWIECKI: And, I guess, the point I'm trying to get to is on this Treasury Management Cash Fund, will that fund go through the appropriations process in terms of...I understand it will be a cash fund, but the appropriation process, essentially, for all of our cash funds...no money can be spent out of them unless it is approved by the Legislature. Is that what you're envisioning with this fund as well? [LB620]

SENATOR PIRSCH: Yes. I believe...that is my understanding that I...and without legislative appropriation that they could not...these funds would be used for reimbursement purposes only for the bad debt. It would be an offset. [LB620]

SENATOR SYNOWIECKI: And then the \$30 will go into this fund and then they'll have to come to the Legislature to get appropriations out of that fund to offset any loss they have for processing for bad checks? [LB620]

SENATOR PIRSCH: That's my understanding. Now I should mention I believe it's up to \$30. That doesn't mean that it might not be \$20 or some lower amount. And I should point out that the...again mention that with respect to private debt, that is allowed to have a \$35 level in the state too. [LB620]

SENATOR SYNOWIECKI: Okay. Thank you, Senator Pirsch. [LB620]

SENATOR PIRSCH: Sure. [LB620]

SENATOR FRIEND: Thank you, Senator Synowiecki and Senator Pirsch. Senator Pirsch, there are no other senators wishing to speak. You are recognized to close on LB620. [LB620]

SENATOR PIRSCH: I just want to thank Senator Synowiecki for his questions. They

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are...I think they do help clarify. And I would just urge the...and I want to thank the Judiciary Committee and Senator Chambers for their input and helping to craft this bill. I think they've made it a much better bill. So I just urge the body to advance the bill as it... [LB620]

SENATOR FRIEND: Thank you, Senator Pirsch. Members, you have heard the closing on LB620. The question is, shall LB620 advance to E&R Initial? All those in favor please signify by voting aye; all those opposed vote nay. Record please, Mr. Clerk. [LB620]

ASSISTANT CLERK: 28 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB620]

SENATOR FRIEND: LB620 does advance. [LB620]

ASSISTANT CLERK: Mr. President, the next bill, LB196. (Read title.) The bill was read for the first time on January 19 of last year; referred to the Government, Military and Veterans Affairs Committee. That committee reports the bill to General File with committee amendments attached. (AM506, Legislative Journal page 695, First Session, 2007.) [LB196]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Schimek, you are recognized to open on LB196. [LB196]

SENATOR SCHIMEK: Thank you, Mr. President and members. LB196 is a bill that was brought to me by the Military Department last year. I think it's a fairly straightforward bill. I don't think it should be controversial. What it does is it amends Section 55-133 of the statutes and it specifically addresses the Adjutant General's duties when it comes to assignment of National Guard armories and equipment. The main reason for the legislation is to permit the use of emergency flashing lights on certain vehicles owned by the Military Department, those assigned to the Civil Support Team, or CST, and the CERFP, which is the chemical, biological, radiological, nuclear and high-yield explosive enhanced response force package. When authorized by the Adjutant General, these vehicles would only be operated when responding to a public disaster: war, riot, invasion, insurrection, resistance of process, or in the case of imminent danger of the occurrence of any such events. Both the CST and the CERFP are available to be called forward to disasters through the coordination with the Nebraska Emergency Management Agency after an emergency is declared by the Governor. This proposal will be extremely beneficial in the early stages of a disaster, during of a time of high confusion and likely traffic congested in the affected area. Operating emergency flashing lights permit law enforcement and traffic management officials to identify these special military vehicles and efficiently guide them to disaster sites. This proposal will not, will not permit these vehicles to speed or ignore traffic laws, unless under strict law enforcement supervision. Flashing lights will clearly identify these vehicles when they

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are part of a law enforcement convoy or when entering into a congested area and needing to be identified by law enforcement officers. The Adjutant General would develop and enforce operating procedures for these military emergency vehicles so that it would not be as though National Guardsmen and women would be able to operate these vehicles at their leisure whenever they chose. Procedures would be established that must be followed. LB196 also revises lighting requirements for convoys to be in compliance with national regulations in current practice. This bill changes the requirement from blue and green lights to amber rotating flashing lights. And this bill was prepared also in consultation with the Nebraska State Patrol. Thank you very much. [LB196]

SENATOR FRIEND: Thank you, Senator Schimek. Members, you have heard the opening on LB196. As the Clerk mentioned, there are Government, Military and Veterans Affairs Committee amendments. Senator Aguilar, as Chair of that committee, you are recognized to open on those amendments. [LB196]

SENATOR AGUILAR: Thank you, Senator Friend, members of the body. The committee amendment is technical and cleanup in nature. It makes changes to harmonize and clarify the definition of authorized emergency vehicle. For example, the committee amendment adds rescue vehicles to the definition of authorized emergency vehicles, to make it consistent with other statutes. Also, the committee amendment reinstates language to ensure rescue vehicles and privately owned ambulances are included in the list of vehicles allowed to have flashing or rotating red and white lights. The bill was advanced from the committee on an 8 to 0 vote. There was no opposition to this bill at the public hearing. And I urge your support of the committee amendment and the underlying legislation. Thank you, Mr. President. [LB196]

SENATOR FRIEND: Thank you, Senator Aguilar. Members of the Legislature, you've heard the opening on the Government, Military and Veterans Affairs Committee amendments, AM506. There are no senators wishing to speak. Senator Aguilar waives closing. Members, the question is, shall AM506 be adopted? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB196]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB196]

SENATOR FRIEND: The committee amendments are adopted. [LB196]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB196]

SENATOR FRIEND: Back to discussion of LB196. Senator Schimek, there are no senators wishing to speak. Senator Schimek waives closing. The question is, shall

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LB196 advance to E&R Initial? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB196]

ASSISTANT CLERK: 31 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB196]

SENATOR FRIEND: LB196 does advance. Mr. Clerk, items for the record? [LB196]

ASSISTANT CLERK: Mr. President, new bills. (Read LB1163-1175 by title for the first time.) That's all I have, Mr. President. (Legislative Journal pages 338-340.) [LB1163 LB1164 LB1165 LB1166 LB1167 LB1168 LB1169 LB1170 LB1171 LB1172 LB1173 LB1174 LB1175]

SENATOR FRIEND: Thank you, Mr. Clerk. Back to General File. []

ASSISTANT CLERK: Mr. President, the next bill, LB632. (Read title.) The bill was read for the first time on January 17 of last year, referred to the Agriculture Committee. That committee advanced the bill to General File with committee amendments attached. (AM527, Legislative Journal page 697, First Session, 2007.) [LB632]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Dierks, you are recognized to open on LB632. [LB632]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. LB632 is a bill that deals with a national uniform system of animal identification. The initials are NAIS, in case you've seen it other places. Let me briefly give you some background as to why this bill was introduced. In 2004, the USDA started a mandatory national program to establish the National Animal Identification System which included premise registration. States initially received federal funds to establish and maintain in-house databases with three premise...with these premise registrations. Later, the USDA changed the collection of premise registrations from mandatory to a voluntary program. Some Nebraskans may have registered early because it was mandatory, but may not want to participate in the now voluntary program. LB632 clarifies that the state's premise registration program is voluntary, not mandatory. It also establishes a requirement that the Nebraska Department of Agriculture develop a process to remove premise identifiers from local, regional, state, and federal databases when such a request is made. The bill also requires the Department of Agriculture to comply with state and federal privacy and confidentiality laws with respect to premise identification information that is collected. I believe LB632 is a simple and a fair bill. Since the USDA changed the mandatory premise registration to a voluntary program it is only logical to believe that some people may want to now withdraw from such a program. The department should accommodate such a request. There should also be privacy and confidentiality requirements when gathering personal information from farmers and ranchers. With

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that, I'll close and ask your support of LB632. Thank you. [LB632]

SENATOR FRIEND: Thank you, Senator Dierks. Members of the Legislature, you've heard the opening on LB632. As the Clerk stated, there are amendments from the Agriculture Committee. Senator Erdman, as Chair of the Agriculture Committee, you are recognized to open on AM527. [LB632]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. LB632 was heard before the Agriculture Committee on February 20, 2007. Six of the eight members were present, and six of the eight members did vote to advance the bill with the committee amendment attached. The committee amendment essentially carries out the original provisions of the bill to clarify that the registration of premises in Nebraska is voluntary, and to expressly provide that the Department of Agriculture shall facilitate producer's requests to withdraw premise registrations. As introduced, LB632 directed the department to develop and facilitate a process for withdrawal of premise registration identifiers from local, state, and federal database, and approve an affidavit that such had occurred. The committee amendments essentially directed the department shall purge any premise registration info from any database it maintains and to give written confirmation to the producer and to cooperate with USDA in withdrawing premise registration information. The committee amendments also strike Section 2 of the bill to essentially retain the confidentiality provisions pertaining to information supplied for participation in a national animal ID system as it exists in Section 54-702. When implementing premise registration, the Department of Agriculture maintained an in-house database and the system was paid for through federal funds and grant funds. Funding for maintenance of the premise registration system was discontinued and, therefore, the department went to utilizing a national premise registration database through the United States Department of Agriculture. And the paper trail is still authorized or still able to be followed through the Department of Ag because there may be paper copies of that premise application kept on file. The bill as amended would essentially confirm the existing practice. And there is somewhat of a discussion about what was actually intended in 2004, Senator Dierks pointed out, as to whether it was contemplated to be mandatory or voluntary. The fact remains that in Nebraska it was always a voluntary program. And so in keeping with that and the concerns that we heard before the committee, the legislation before you would codify that process and practice and would require that an individual that would seek to have their premise withdrawn from the registration would be eligible to do that. The result of that successful completion would remove any records and contact information relating to that premise from the department's information. We have also done some research and found that during the course of this premise registration process that approximately ten producers have contacted the department in seeking to have their premise "deregistered." The confidentiality provisions in existing law are very tight. Subsection (1) of the bill expressly exempts information producers provide for participation in the National Animal ID System from open records laws. However, it does provide two situations where that

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information may be released: when an authorized...when authorized by the person who provided the information is one, and is necessary for purposes of disease surveillance and investigation regarding or relating to a disease incident. Otherwise, those premises and that information is not available under the open records laws. Again the committee advanced the bill on a 6 to 0 vote with the committee amendment. It was heard before the committee on February 20 of 2007. I would encourage your adoption of the committee amendments. Thank you, Mr. President. [LB632]

SENATOR FRIEND: Thank you, Senator Erdman. Members of the Legislature, you've heard the opening on AM527, the Agriculture Committee amendments. There are senators wishing to speak. Senator Louden, you are recognized. [LB632]

SENATOR LOUDEN: Thank you, Mr. President and members of the Legislature. I support Senator Dierks's bill and also wholeheartedly support the committee amendment that was put onto it which acted as the bill. When this National Animal Identification System was first brought out, it was promoted as something that was probably going to have to be mandatory, and many people went ahead and registered their premises. Since then it has run into different problems in different states. Not all of the states have agreed on how we should go about having an animal identification. The question has been...is, what are you going to use this database for? And so consequently there are people that have been wanting to withdraw their premises from this. It isn't just cattle that are included in this, but there are hogs, poultry, about any animal that is used for some type of food consumption, or they can carry a disease that's related to livestock. So this is, I think, a bill and some statutes that we need to have in here to help people if they do not wish to be in this program at this time. I'm not questioning whether it needs to be. It has to be, as Senator Erdman said, in case of illness or diseases that are fast-moving in livestock to be identified. The question from other states have been, what do we use our brand laws for; how can they be utilized? And what type of an implant do you put in an animal to continue to identify that animal as they move off the premises? At the present time they have not come up with an ideal solution yet on what kind of a tagging system to be used, and how that tagging system will be used through auction barns. So at the present time I think this is something that...we need it in a timely manner and I certainly support the amendment to the committee amendment to the bill of LB632. Thank you, Mr. President. [LB632]

SENATOR FRIEND: Thank you, Senator Louden. Senator Hansen, you are recognized. [LB632]

SENATOR HANSEN: Thank you, Mr. President, Senator Dierks, would you yield to a couple of questions? [LB632]

SENATOR FRIEND: Senator Dierks, will you yield to questions from Senator Hansen? [LB632]

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SENATOR DIERKS: Yes. [LB632]

SENATOR HANSEN: Senator Dierks, I'm going to refer to you as our resident veterinarian, because I think you're the most distinguished veterinarian in the room. (Laugh) [LB632]

SENATOR DIERKS: You're safe with that statement for sure. [LB632]

SENATOR HANSEN: (Laugh) The whole program of animal ID, when it came up, was to do what? [LB632]

SENATOR DIERKS: I think it was part of the...as an aftereffect of 9-11 to provide some biosecurity for food safety in our state and our nation. [LB632]

SENATOR HANSEN: Did it have anything to do with, instead of maybe 9-11-2001 but maybe December 24 of 2003 with the cow found in Washington State with BSE? [LB632]

SENATOR DIERKS: That probably had some effect on it as well. [LB632]

SENATOR HANSEN: Will a...will any form of federal guidelines, federal protocol through USDA, is there anything that we can do to prevent what happened in November (sic) 24, 2003, with a cow that was found with BSE that ruined our market, ruined our exports, gave much amount of distrust to the consumers of America about the cattle industry? Is there anything that we can do, short of having an animal ID program and something under the control of the USDA? [LB632]

SENATOR DIERKS: Well, I'm not sure that there is anything you can do to stop that. That animal got in here from Canada, and we don't have an animal identification program with Canada. I think they found out the source in reasonably good time. So I didn't think it was that big a problem. Actually, as far as preventing that thing from happening again, I don't think that you can do it with an animal identification system. I'm not sure if that would help. One of the problems I have with this Animal Identification System is the fact that...the confidentiality thing. And even though they say that USDA is not going to...is going to protect confidentiality, any time you give the power for confidentiality to private contractors, you've got the opportunity to lose confidentiality. And I think this is part of the problem that people have with NAIS. [LB632]

SENATOR HANSEN: Thank you, Senator Dierks. One comment that I would make back to you, it's not in the form of a question but a statement. In the...the cow that was found in Washington State was from Canada. There is a Canadian animal ID program. As soon as they found out that cow was from Canada they could identify what premise

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that was. Mr. President and members of the body, 005UBQX is my premise number on my ranch. It doesn't mean anything. There's nothing magical to it. It doesn't give any addresses, it doesn't give any financial information, doesn't give any family names or anything else like that. I don't fear premise registration. And the reason we need premise registration is a whole nother topic and a whole nother set of discussions that we need to have at some point. If we're going to talk about doing away with the premise ID, I would like to say why we need it. It will only be used in the event of a food safety or animal health issues that concerns the livestock industry in the state of Nebraska and the livestock industries across the country. [LB632]

SENATOR FRIEND: One minute. [LB632]

SENATOR HANSEN: This is USDA's attempt to control a catastrophic breakdown of the protocol when serious animal health outbreaks occur. Some examples of those are FMD, or foot-and-mouth disease; TB, known as tuberculosis; brucellosis; pseudorabies; avian influenza; trichomoniasis, which is a venereal disease in cattle; BVD, bovine virus diarrhea; or BSE. Some of these are serious; some of them are not. We don't know where they're going to break out. If we did, we could handle the problem ahead of time. We need a system to handle food safety issues and animal health issues. Premise ID is not, to me anyway, is not a breakdown of confidentiality in my operation or it shouldn't be a breakdown of confidentiality in anyone's operation. I don't think we need the legislation. The Department of Agriculture in the state has said if you want to delist your premise you can do it. [LB632]

SENATOR FRIEND: Time. [LB632]

SENATOR HANSEN: Thank you, Mr. President. [LB632]

SENATOR FRIEND: Thank you, Senator Hansen. Members, we are discussing AM527, the Agriculture Committee amendments. Senators wishing to speak are Stuthman, White, and Wallman. Senator Stuthman, you are recognized. [LB632]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to engage in a little conversation with Senator Dierks. [LB632]

SENATOR FRIEND: Senator Dierks, will you engage in conversation with Senator Stuthman? [LB632]

SENATOR DIERKS: Yes. [LB632]

SENATOR STUTHMAN: Senator Dierks, I see in the committee statement and the testimony when you had the hearing that you had a lot of proponents. But the opponents of this were the Nebraska Cattlemen and Nebraska Pork Producers, two of

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the largest groups of the food industry in the state of Nebraska. Can you or do you remember what their opposition was or why did they not support this bill? [LB632]

SENATOR DIERKS: I don't remember exactly what the opposition was, but I know that they were concerned about the loss of the animal identification system. And we aren't doing away with that. We're just saying that if it's voluntary then you can do it, but if it's...if you...it's no longer mandatory, so you can get reduced from that responsibility if you want to be relieved of it. [LB632]

SENATOR STUTHMAN: So the real intent is to make it voluntary? [LB632]

SENATOR DIERKS: Well, it is voluntary and we just need to honor that by allowing people who have...who registered their premise, thinking it was mandatory, who now wished that they hadn't, so that they can become free of that registration. [LB632]

SENATOR STUTHMAN: Is...is...Senator Dierks, is there any methods, even if your name was removed from the premise ID information, is there any way that a person could find your premise through any other agency? [LB632]

SENATOR DIERKS: Well, in my particular instance they can find it through the Brand Committee, but that doesn't stretch across the state. I just refer to the fact that we've handled brucellosis and we've handled tuberculosis, we've handled pseudorabies, we've gotten along all right without premise identification. We've managed to eliminate those diseases. So it's really...we have, in effect, in our state the ability to do these things without premise identification. And that isn't even the problem here. The problem here is that we want to give people an opportunity to be "deregistered" if they registered because they thought it was mandatory and now it's voluntary. That's what the whole issue is here. [LB632]

SENATOR STUTHMAN: And, Senator Dierks, you feel that the people that did register their premise ID, that they felt that it was mandatory at that time? [LB632]

SENATOR DIERKS: Sure. Well, I don't know. Some of them didn't feel that way because it hasn't been...it's been voluntary for awhile and some people have still registered. So I mean,...but there are some people who did register because they thought it was mandatory. [LB632]

SENATOR STUTHMAN: Do you think the registration for the animal ID came more with the Cattlemen's Association or more with the Pork Producers? I don't recall ever the Pork Producers, you know, going out and trying to get the registration of your premise. I do remember the Cattlemen going out and getting your premise ID. But a premise ID includes both, doesn't it? [LB632]

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SENATOR DIERKS: Includes both what? [LB632]

SENATOR STUTHMAN: Both species, cattle and hogs. [LB632]

SENATOR DIERKS: Oh yes, it includes ducks, chickens, goats, anything that can be in commerce. [LB632]

SENATOR STUTHMAN: So my six chickens are included in that too? [LB632]

SENATOR DIERKS: Yep. [LB632]

SENATOR STUTHMAN: Okay. I'm going to listen to the testimony, if there is much. But I am concerned with the issue that Senator Hansen did bring up, the fact that when this one cow came in and found it had the BSE, it really did affect the livestock industry. It was very costly to the cattle producers. And those dollars are never to be ever gained back just because of that one instance. And that...you know, it was found that it came from Canada. But I think that since it was from Canada that ID should have been taken care of immediately,... [LB632]

SENATOR FRIEND: One minute. [LB632]

SENATOR STUTHMAN: ...immediately. It hit the news and everything that was found, you know, in Washington, but it was from Canada. But I did not hear the response that it was from Canada, you know, within the hour or within the day. They had to trace it back and trace it back and trace it back until finally they resolved that it did come from Canada and then it had an ID. And Canada does have an ID program. Thank you, Mr. President. [LB632]

SENATOR FRIEND: Thank you, Senator Stuthman. Mr. Clerk, you have new bills to read? [LB632]

ASSISTANT CLERK: Mr. President, new bills. (Read LB1176 by title for the first time.) New resolution, LR231CA by Senator Erdman is a proposed constitutional amendment to eliminate the Tax Equalization and Review Commission and to establish a property tax appellate court. LR232 by Speaker Flood pertains to the Transportation and Telecommunications Committee. Consistent with that, I have a letter from the Speaker referring LR232 to the Reference Committee for reference to an appropriate standing committee. LR233CA by Senator Christensen is a proposed constitutional amendment to prohibit discrimination and preferential treatment on the basis of race, sex, color, ethnicity and national origin. In addition to that, your Committee on Enrollment and Review reports LB467 to Select File with amendments; LB467A to Select File with amendments; LB575 to Select File with amendments; LB706, LB707 to Select File; LB235 to Select File with amendments; as well as LB235A, LB202. Your Committee on

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Natural Resources gives notice of committee hearing; Revenue Committee, notice of hearing; Judiciary Committee, Health and Human Services, and Appropriations. An amendment to be printed to LB534 from Senator Louden. And a motion pertaining to LB1141 from Senator Erdman. An announcement that the Executive Board will meet for referencing in Room 2102 following adjournment. A series of name adds: Senator McDonald to LB51; Senator Dwite Pedersen to LB844; Senator Schimek, LB983; Senator Fulton to LB1010; Senator Burling to LB1010; and Senator Aguilar to LB1116. (Legislative Journal pages 340-351.) [LB632 LB1176 LR231CA LR232 LR233CA LB467 LB467A LB575 LB706 LB707 LB235 LB235A LB202 LB534 LB1141 LB51 LB844 LB983 LB1010 LB1116]

I have a priority motion, Mr. President. Speaker Flood would move to adjourn until Thursday, January 24, 2008, at 9:00 a.m. []

SENATOR FRIEND: Members, you have heard the priority motion to adjourn until Thursday, January 24, 2008, at 9:00 a.m. All those in favor please say aye. All those opposed say nay. We are adjourned. []